SENATE—*Thursday, September 29, 1994*

(Legislative day of Monday, September 12, 1994)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore, the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

In a moment of silence, let us remember the father of Senator BRADLEY, who is very near death.

Eternal God, sovereign Lord of history and Ruler of the nations, the words of one of the greatest monarchs of the ancient world, King David, are worthy of our contemplation. He prayed, *"How precious also are thy thoughts unto me, O God! How great is the sum of them! If I should count them, they are more in number than the sand * * *."*—Psalm 139:17, 18.

Gracious, loving Father, as the proximity of adjournment sine die and election day increases, the buildup of pressure increases. Like a vice, the Senators are squeezed between time and what remains to be done, which often stimulates cold hearts and hot heads.

Dear God, we pray for a special, divine dispensation to cover the Senate, its Members and all who labor in this place. Grant grace to distinguish between significance and urgency, and guide the Senators in a way that will close the 103d Congress, leaving them with great satisfaction and little disappointment.

In His name who is the way, the truth, and the life. Amen.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1995—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 4556 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4556) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1995, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 26, 1994.)

The Senate proceeded to the consideration of the conference report.

OFFICIAL PHOTOGRAPH OF THE SENATE

Mr. MITCHELL. Mr. President, in accordance with the provisions of Senate Resolution 272, the Republican leader and I have agreed that the official photograph of the U.S. Senate will be taken on Tuesday, October 4 at 2:30 p.m. All Senators should plan to be present on the floor at that time. That is Tuesday, October 4, at 2:30 p.m.

BILL EATON

Mr. MITCHELL. Mr. President, I know I speak for all Members of the Senate when I pay tribute to Bill Eaton of the Los Angeles Times. This is Bill Eaton's last day as Senate correspondent for the Los Angeles Times. He is to become the curator of the Hubert Humphrey fellowship program for foreign journalists at the University of Maryland. Bill has had a long, distinguished career as a journalist. He began at the Evanston Review, in Illinois, moved to United Press International, the Chicago Daily News, and then to Knight-Ridder.

While at the Los Angeles Times, Bill covered not only Washington but served as bureau chief in Moscow and New Delhi. Bill has been honored a number of times by his colleagues and his profession, including being the recipient of the Pulitzer Prize for national reporting. Bill's careful and fair reporting, his genial demeanor, will be missed by all of us who had the pleasure to work with him. He also has the good judgment to vacation regularly in Maine, and I wish him well in his new endeavors and hope to see him captaining his new boat among the islands off the coast of Maine.

I join all Members of the Senate in wishing Bill Eaton good luck and Godspeed.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator BRADLEY be recognized to address the Senate as in morning business for up to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from New Jersey will be recognized for 15 minutes.

Mr. MITCHELL. And following Mr. BRADLEY's remarks, Senator HATFIELD will be recognized to address the Senate for up to 15 minutes, and upon the completion of Senator HATFIELD's remarks the Senate will return to legislative session and consideration of the pending Transportation appropriations bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from New Jersey [Mr. BRADLEY] is recognized for 15 minutes.

THE URUGUAY ROUND IMPLEMENTING LEGISLATION

Mr. BRADLEY. Mr. President, I rise to call the Senate's attention to an event of great significance to our country and to my home State of New Jersey. The President has submitted legislation to ratify and implement the Uruguay round GATT Agreement. With the formal submission of this legislation, we are one step closer to laying the foundation for American prosperity into the 21st century.

Not since the early days of this century has the world economy been as open or the potential for world economic development been as great as it is today. Paradoxically, rarely has America's anxiety about its own future been as great.

This is a normal reaction for a population which has largely defined the globe on its own terms since 1945. As our Nation struggles with the powerful, inexorable transformations of our day—the end of the cold war, the explosion of world markets, the information revolution, growing national debt—we naturally are anxious about what these fundamental forces mean to us.

But it is imperative that we respond by assessing control over our destiny, rather than passively allowing these global forces to dictate our future. Indeed, our identity as a nation is tied to our ability to manage change for our benefit. Adaptability as the engine of progress is central to the American experience.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The evolution from an agrarian to an industrial to a postindustrial American economy, the emergence of the progressive movement followed by the New Deal, and the growing role of women in and the increasing racial and ethnic diversity of America's ability to make social trends work in our favor. The rapidly changing nature of the contemporary world economy presents us with a new challenge. Today, in the Congress, that challenge is exemplified by our pending consideration of the Uruguay round.

The Uruguay round agreement provides us a framework for creating wealth from these developments rather than suffer the consequences of trying to ignore them. It will satisfy an American impulse that has guided us throughout our history—to embrace fair competition, confident in the belief that we will prosper whenever our national capabilities are matched against those of any other country in the world.

This is why I have supported free trade and the GATT. This is why I have supported the Uruguay round from before its inception. In 1984, I was approached by Arthur Dunkel, then Director General of the GATT, about serving on a seven-person study group to map the conceptual framework for a new GATT round, which became the Uruguay round.

At the time, the industrial democracies were just emerging from a severe recession. Growth was weak, unemployment high, and the increase in nontariff trade barriers was threatening to nip the recovery in the bud. The time was ripe for a new GATT round to fight back against protectionism and give a boost to the world economy.

As the only American and the only politician in the group, I felt a special responsibility to get this project done right. Other members were a Swedish industrialist, a French lawyer, a Brazilian financier, and Indonesian Cabinet Minister, an Indian economist, and a Swiss banker. Our interactions were frank and flowed from our different perceptions of the world economy as well as our common commitment to treat change as an opportunity and not a threat.

In the end, we issued a report with 15 recommendations. The most important were: increasing the transparency of trade policies, in other words, not hiding what we do, but doing it out in the open so all the world can see; bringing trade in textiles, services, and agricultural products into the overall GATT Agreement; reducing and controlling nontariff barriers, those things that each country would do so that they could not quite be seen and they could not be put as a tariff but, nonetheless they would impede world trade; tightening rules on subsidies, and improving GATT's dispute settlement system.

So Mr. President, for me, then, the Senate's vote will be the culmination of a decade-long process. Many of the areas that we urged action on in that report have been included in the final Uruguay round agreement.

This process has been rough, even precarious. Talks broke down more than once. Deadlines passed. Fast-track authority expired. The world economy transformed itself in ways we could not imagine in 1984, leaving negotiators scrambling to catch up with this rapid change.

But, in the end, the process ground to a conclusion. The tenacious efforts of four United States Trade Representatives, their staffs, and numerous others, sustained the Uruguay round over 7 years of difficult negotiations. Building on the work of his predecessors, especially the outstanding Carla Hills, Mickey Kantor finally brought the round to a successful conclusion last December. We have an agreement or, rather, a series of agreements, that substantially meets the goals that we set out in 1985 in that report. We will soon have before us the legislation to implement the agreements. This stage of the GATT process is almost at an end.

Any trade agreement must be understood, is an accumulation of individual interests. Some interests do better than others in the negotiations and legislative process. Those who believe they have done well, do not complain. Those who believe they have done less well complain, sometimes even oppose an agreement.

But what was true in 1984 is true today. The fundamental value of this agreement is that it strengthens the international trading system so that all interests, including the general interest, come out ahead. It preserves America's role at the heart of the international trading system, ensuring that Americans receive their share of the benefits of expanded trade.

The health of the international trading system is central to global economic health. We need only look at the history of the 20th century for proof. In 1930, Congress passed the Smoot-Hawley tariff, which helped plunge the world, not merely into recession, but into full depression. It exacerbated the trend that was already underway. Depression, in turn, paved the way to world war.

By contrast, in 1947, the General Agreement on Tariffs and Trade came into effect, and the world prospered on the back of expanding global trade. Or, rather, that part of the world prospered which integrated itself into the global trading system.

The health of the international trading system is vital to America's economic health. Let me cite just a few facts that demonstrate the importance of exports to our prosperity.

In my State of New Jersey alone, we have increased exports 90 percent since 1987 to 1993. We have over 12 to 14 billion dollars' worth of merchandise exported, over 200,000 jobs tied directly to exports.

In 1947, when the GATT took effect, U.S. exports were around 8 percent of an American GNP of just over $234 billion. Remember, this was when America stood as a colossus around the world.

In 1993, even though we now face strong competition from Europe, Asia, and even Latin America, America still exported over $660 billion worth of goods and services, accounting for 10.4 percent of an American GDP of almost $6.5 trillion and directly supporting 10 million American jobs. In nominal terms, American exports in 1993 were almost three times America's GNP in 1947.

Anyone who doubts the importance of trade and integration into the international trading system should compare economic performance in the United States and Argentina in this century.

The turn of the century was the last time that the world economy was as open and the flow of capital as free, it was in the midst of fundamental transformation. At that time, Argentina and the United States had much in common—large, underpopulated territory; continuing inflow of European immigrants and capital; vast agricultural and mineral riches, and rapid industrialization. Between 1900 and 1930, Argentina even had an average annual per capita rate of growth 50 percent higher than the United States.

However, following the Great Depression, the United States and Argentina embarked on opposite courses. The United States joined GATT and reopened to international trade. Argentina withdrew from the world and opted for economic autarky behind high tariff walls. And its politics became a bloody process of dividing up among elites smaller and smaller pieces of the economic pie.

It is no coincidence that America entered this decade as the largest, most productive country in the world, while Argentina began the 1990's a developing country struggling to rejoin the world economy. According to a study by Domingo Cavallo, and a number of others, if Argentina had maintained an open trading regime, its GNP in 1984 would have been 63 percent higher, investment would have doubled, and exports would have almost tripled.

I would note that Domingo Cavallo, one of the authors of this study, took its lessons to heart. As Economic Minister in Argentina, today he has orchestrated the reforms that have brought back Argentina economic stability and put that great country on the road to prosperity.

There is one more piece of the equation, Mr. President, which goes beyond trade and prosperity to bear on the stability of the international system as a

whole. It has been our national experience that the world is safer for our interests when major nations have a stake in the functioning of the system. The world is safer for our interests when countries have an institutional structure within which to work out their differences. In today's world, the GATT—soon to be part of the World Trade Organization—is the most widely accepted and used example of an integrating and mediating organization. The habits of cooperation, adherence to rules, and responsibility fostered by negotiation and dispute resolution spill over into other aspects of dealings between nations.

Some have argued that this agreement is too long, too complex, and we should not be taking it up in the remaining days of this session. Mr. President, I could not disagree more. If we postpone this agreement until next year, we will damage the world economy, we will damage the American economy, and we will damage the American wage earner.

If the United States Congress were to delay this legislation until next year, we would call into question whether the Uruguay round would ever be implemented. The markets have already discounted this $744 billion global tax cut. Were it now to be withdrawn, the markets would react, and the result could be extremely adverse to Main Street as well as Wall Street.

If the United States were to call the Uruguay round into question, forces of protectionism around the world would be strengthened, the momentum for trade liberation would be stalled, and the United States would abdicate a leadership role in the international economy.

Closer to home, and our constituents, delaying 6 months would mean delaying the benefits of trade liberalization.

Every year for the next 10 years, there will be 25,000 fewer jobs than if we act this year. Treasury projects that the average American family will lose $110 per year in income over the next decade if we simply delay this agreement 6 months—a delay of a real tax cut for Americans.

All of this assumes that after the delay, of course, we would still be able to pass this legislation—next February or March or April. This agreement is good today, and it will be good next February, they say. But delay will encourage GATT's opponents and give them more time to make their protectionist arguments. Who calculates the impact, especially on new Members of Congress, those who are out there now campaigning against GATT? When they get here, they will be against GATT. The prospects of passage will be less, not more.

Mr. President, in 1914 the world order was shattered by a bullet in Sarajevo. The crashing political order ultimately took the open world trading system with it, in part because the United States shied away from leadership. In 1914 and after, we were unable to cope with the transformations shaping our world. The result was depression, world war, and cold war.

In 1989, the world order was shattered again, as the Berlin Wall tumbled down. Once again, we face fundamental transformations that are reshaping our world. As a result, we have another chance to build a more stable, democratic, and prosperous world. Such a world can only rest on a sound international trading system that allows the market to regulate international competition. Such a world will only come to pass if America steps confidently forward to seize the challenge. Our vote on the Uruguay round will be a test of that confidence. We must vote this year, and we must vote "aye."

The ACTING PRESIDENT pro tempore. The Senator from Oregon [Mr. HATFIELD] is recognized for 15 minutes.

REMARKS OF SENATOR MITCHELL

Mr. HATFIELD. Mr. President, last Thursday night, the Senate gathered in a rather unusual format by having dinner with our spouses and enjoying the fellowship in a social setting that so oftentimes we miss by our respective schedules, which often carry us in different directions, toward such things as committee work, not a relaxed environment where we can really come to know each other. At that occasion, the majority leader, Senator MITCHELL, gave some remarks on behalf of the departing Senators who are retiring for various and sundry reasons.

Mr. President, as we all know, we have a rather common practice in the Senate—and a good one—of offering for the CONGRESSIONAL RECORD the remarks of colleagues or of people outside of the body politic, when those remarks have been very helpful or very impressive. And so it was that following the remarks by Senator MITCHELL, Senator GLENN of Ohio had them included in the CONGRESSIONAL RECORD. But I would not like to have such uncommon remarks be lost in a common practice because these were more than just good or excellent remarks. These remarks were some of the greatest commentary I have heard or seen relating to public life in general and to the body of the Senate and the Congress specifically.

I would like to just quote a few of these remarks and sort of exposit because I feel that such remarks do not happen very often.

If we go back in history, we find that truth is expressed in many different ways. We have had the early fathers of the church who had truth expressed through what they called revelation, revelation from the divine. We have had truth expressed through the use of satire. We have had truth expressed through pithy statements, Yogi Berra being such an example. But then we have found on occasion where truth emerges out of a very careful analysis based upon thinking, reflection, experience, all of these making it very, very unique truth. And that is the category in which I would place the majority leader's remarks.

I recall back in the classroom, when I was teaching political science, on occasion I would assign what would be called required reading. That was never greeted with enthusiasm by the students but oftentimes with appreciation after their reading. Many times it was not an entire book. It might be an essay. It might have been one of the Federalist papers. Or it might have been many other ways in which I felt important information was compiled.

I would say that this would be a required reading for all of my students were I back in the political science classroom. I think also it might be very excellent for the next session of the Congress to present these statements by Senator MITCHELL in an attractive format to the new, incoming Senators as a part of the so-called training and initiation sessions that we give to the new Senators in order to give them a perspective to begin their Senate career, to give them an outline of a kind of expectation of what is going to be experienced in their own personal lives as they serve in the Senate.

One of the comments Senator MITCHELL made was, "It is fashionable to criticize Congress." I am quoting now from his statement. "The criticism so resonates with the American people that some Members of Congress are themselves among the leading voices in disparaging this institution."

He goes on to say that Congress has never been necessarily a popular body within our political system. So he gives us a perspective of time, a perspective of history, an understanding of what this institution is really all about. He used as an example that people usually unite in times of great fear or challenge or war, and they let their differences become secondary. But he cited World War II and the attitudes that the American public expressed then, at a time of great danger for this country, as a time when things were in the balance as to the future of this country.

And yet he recalls for our benefit that such a time was even then filled with skepticism. It was filled with what you might call harsh criticism of this body. And he quotes Sam Rayburn, who was getting damned tired of hearing the Congress blamed for everything.

Now, Mr. President, I would like to just digress a moment to express my own observation that we have to understand and be forthright in admitting that this is an egocentric profession we

are in, politics. The Senate is the epitome of egocentricity in the sense that, outside the Metropolitan Opera Company, I am not sure of any agency in life that massages the prima donna complex in people as does the body politic or the political profession, particularly the Senate. We are the upper body. We are a unique parliamentary upper body, one of the only bodies in the world of an upper chamber holding significant power and exercising significant power. I could go on with the distinctions of the Senate over any other upper body of a parliamentary system.

And so, being this kind of a body and this kind of people, we are supersensitive to criticism. I found myself in such an experience. At such moments in time, unfair and untruthful statements are often made toward us. Because of that, then we sometimes get so centered on the moment we think life is totally different than any other time in history, and we have to then have someone like Senator MITCHELL yank us up and say, "Now wait a minute." Sure, there is a lot of unfair criticism. We cannot deny that. We have proven its unfairness many times by the facts of the case and refuting such criticism, individually and corporately.

But on the other hand, criticism is part of the price of a free society. Senator MITCHELL says it is in the legislative chamber that human rights and political rights are guaranteed. Under any kind of system that only has the power vested in an executive—be he or she a king, a queen, a fuhrer, a duchy, a czar, whatever it may be—without a powerful legislative body, the people's rights are in jeopardy. If this is the price of freedom, then perhaps we should be a little more gracious in accepting that criticism.

Senator MITCHELL also points out in his remarks that society, particularly a free society, is always anxious for change—and fast change and rapid change. They see a problem, and they say, "Why don't you fix it?" Then we have political personages in our day who have a simplistic message: "Just give me power and I will fix it. I will fix it." How many times we have heard that over the last few years, and again in this election cycle. We heard that when the German people were desperate and in economic distress following World War I. We heard it when the Italian people were in economic distress following World War I. We hear it today amongst those who say, "Just give me the authority, the power, the vote, and I will fix it." That plays, of course, to the anxieties, the fears, the desires of people for quick change and progress. And again that is, I suppose, part of the price, one of the exercises of freedom, in a society such as ours.

Mr. President, I ask unanimous consent to again reprint this in full following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATFIELD. You see in Senator MITCHELL's remarks a very profound description of our role today in the context of history, in the comparison of our system against other systems less free.

Then he comes down to a conclusion when he says:

> I've been in the private sector, then in public office, and I'm returning to the private sector. I take nothing away from private life when I say that I don't think anything can ever give the deep and meaningful satisfaction that comes from public service.

So when you add up the ledger—the deficits and the assets—Senator MITCHELL says with all of the problems, the hurts, the unfair criticisms, and so forth on the deficit side, that if you add them up, it comes out with a net gain. It is not a gain in popularity or prestige and certainly not in economic terms. But the gains of public service are that kind of value that comes from within, which is the kind that is totally empirical, that a person understands when praise—and one of the phrases that has been used so often is "Well done, good and faithful servant"—has been given to you for your service. This phrase would certainly be, with his résumé of service, given to Senator MITCHELL. So he says public service must be and is its own reward.

These, I think, are not only words for further essays, words for sermons, but also words of encouragement for all of us who remain as Senator MITCHELL and some of our colleagues now go into retirement.

I cannot help but identify with some words that Senator MITCHELL also shared with us the other night. He said:

> It's because of the promise of America that I, the son of an uneducated, immigrant factory worker from a small town in Maine, was able to become the majority leader of the United States Senate.

And I suppose many could stand here today as I can stand here and say that, as a son of a railroad blacksmith with only 1 year of college and the son of a school teacher, only in America is it the privilege of people of any status—economic, heritage, religious, ethnic—to have the opportunity to rise into positions of leadership such as in the U.S. Senate.

He cites his colleague Senator BYRD as another example and the Republican leader, Senator DOLE, as another example. And there are many other examples across this Senate.

I think, therefore, that I would like to very humbly express my gratitude for not only the leadership and the public service of Senator MITCHELL, but for the inspiration that he gives all of us in his profound reflection, the truth that emanates from that reflection, and the encouragement and the challenge. And I for one am very grateful to have known Senator MITCHELL and, hopefully, I will continue to have a relationship with Senator MITCHELL. I am pleased this morning to express my deep gratitude for his presence here in the Senate.

EXHIBIT 1

STATEMENT OF SENATE MAJORITY LEADER GEORGE J. MITCHELL, SENATE SPOUSES' AND RETIRING MEMBERS' DINNER, SEPTEMBER 22, 1994

I am one of the Senators who will not be returning in January. I will miss the retiring Senators and all of our colleagues. Each is leaving for different reasons.

I will leave because of my personal concept of public service. Unfortunately, some have speculated that I'm leaving because of the difficulties of serving in Congress.

That speculation is not accurate. Of course there are difficulties and frustrations. We all know that. But I'm proud to be a Member of the United States Senate. It's a great honor, the greatest of my life.

Criticism of the Congress is frequent today. But that's not new.

Most Americans cherish the view that during World War II—a time when the Nation was unified in the fight against fascism—all of us pulled together, and cheerfully shared sacrifice and hardship.

But history tells us otherwise. In reality, throughout the war, the Congress was under intense attack for the wartime hardships.

Members of Congress were touchy and defensive. Speaker Rayburn said he was "damned tired of having Congress made the goat for everything." Senator Walter George said he was tired of "indiscriminate sniping and yowling."

It's still fashionable to criticize Congress. The criticism so resonates with the American people that some Members of Congress are themselves among the leading voices in disparaging this institution.

But it's important to keep it in perspective. There never was a time when the Congress was a loved institution. Americans, members of the first truly egalitarian society, have always been skeptical of those who are set apart, whether by wealth, by election, or for any other reason.

That's a good thing; a healthy thing. It keeps our feet on the ground.

But when skepticism turns to cynicism, as it lately has, we risk undermining democracy.

Every system of government, by definition, has an executive. Throughout most of human history, that's all most governments have had: A dominant executive, usually in the form of an elected monarch.

Individual freedom, the liberty that we Americans have come to take for granted, largely came about when independent legislatures came into existence.

Across the sweep of human history, the institution most responsible for the preservation of individual liberty has been the independent legislature.

The men who wrote the Constitution had as their central objective the prevention of tyranny in America.

They had lived under a British king. They did not want there ever to be an American king.

They were brilliantly successful. In two centuries, we've had 42 Presidents and no kings.

Because power is so widely dispersed in our system, the Congress, like Parliaments in other democracies, often looks chaotic, and

disorganized. We often earn the criticism we get.

Every society includes impatient people who want to see rapid change, swift progress, sometimes even revolution. Every society also includes people secure with things as they are, who resist change.

The tensions created by such competing pressures are what drive us. How much change does a society need to stay vibrant? How much must a society conserve to remain orderly?

The critics think we get the answers wrong. And they question our motives and our values.

But what the critics miss is the public service gives work a value and meaning greater than mere personal ambition and private goals.

I've been in the private sector, then in public office, and I'm returning to the private sector. I take nothing away from private life when I say that I don't think anything can ever give the deep and meaningful satisfaction that comes from public service.

Public service must be and is its own reward, for it guarantees neither wealth nor popularity. And, to paraphrase Rodney Dangerfield, you don't get no respect, either.

It's often frustrating. But when you do something that will change the lives of people for the better, then it's worth all the frustrations.

It's often frustrating. But when you do something that will change the lives of people for the better, then it's worth all the frustrations.

Ours is virtually the only Government in history dedicated to opening doors, not closing them.

In America today, I believe anyone can go as far and reach as high as work, talent, and education allow. We can't equalize effort or talent. But we can equalize opportunity—the promise of a fair chance to succeed.

It's because of the promise of America that I, the son of an uneducated, immigrant factory worker from a small town in Maine, was able to become the Majority Leader of the United States Senate.

It's why Robert Byrd, our friend and mentor, could rise from the hard coal fields of West Virginia to serve as Leader in his time.

It's why my friend and colleague, Bob Dole, could come out of Russell, Kansas, and be Leader in his time.

Whatever new problems arise, whatever unforeseeable challenges come, if we can keep that promise alive for our children and theirs, America will never lose her way. For me, that's the purpose of public service, its inspiration, and finally, its reward. We are among a very fortunate few to have been able to reap that reward.

Thank you for the privilege of serving with you.

TRIBUTE TO SENATOR MITCHELL

Mr. WARNER. Mr. President, many of us were privileged, and I say privileged with the greatest sense of emotion, to be in attendance at a dinner given every other year by the wives of the U.S. Senate for the Members and most particularly those retiring.

At that dinner we were privileged to receive the remarks of our distinguished majority leader, the Senator from Maine. Certainly at my table, and I am certain at other tables, it was received as one of the most moving moments in our Senate careers. It was an absolutely magnificent message. It appears in the RECORD just following remarks of my distinguished colleague.

But I just wanted to pay respect to the distinguished majority leader for the friendship, the help, the guidance, and indeed the leadership that he has provided this Senator in the years that we have been privileged to serve together.

I only wish at this point in time I could bring back to memory one of his most remarkable statements. It went something to the effect that the actions that we take, the things that we do in this Chamber we simply know not how far and wide those actions flow through our country. But we can be assured that there are many who will be affected, and hopefully those actions will always be for the greater betterment of mankind and our country.

I yield the floor, and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CAMPBELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

Mr. CAMPBELL. Mr. President, I ask unanimous consent to proceed as in morning business for 4 minutes for the purpose of introducing a bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. CAMPBELL pertaining to the introduction of S. 2474 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE URUGUAY ROUND TRADE AGREEMENT

Mr. MOYNIHAN. Mr. President, I come to the floor with the momentous news that the Committee on Finance has unanimously, 19 to 0, reported the Uruguay round trade agreement to the floor, the largest and most important trade agreement in history.

President Clinton is quoted in the New York Times this morning as having said, and I say accurately and clearly it is the view of the committee: This is the biggest trade agreement in history. It is the biggest worldwide tax cut in history by reductions in tariffs that will give us 300,000 to 500,000 new high-wage jobs in the next few years.

A point that perhaps needs to be noted, tariffs are taxes. Until the Constitution was amended to allow the income tax to be levied by the Federal Government, most of our revenue came from tariffs.

This is a tax cut. It redeems a commitment the United States made 50 years ago at the Bretton Woods Agreement to establish, along with the World Bank and the International Monetary Fund, an international trade organization. That proposal died. In the Senate Finance Committee a half century later now it comes alive again.

It is a hugely important event, and I do greatly thank my friends for allowing me to interrupt their matters in order to bring this important announcement to the floor.

Mr. President, I yield the floor with great gratitude to the Senator from New York.

Mr. LAUTENBERG. Mr. President, I commend the senior Senator from New York for the excellent work that he does in his chairmanship of the Finance Committee moving things along.

One of the things that also happened, I understand of recent days, was to approve the Finance Committee section of the Superfund. So that is ready to come to the floor.

I congratulate our colleague and look forward to the day when the new railroad station in New York will be able to accommodate with convenience, safety and enjoyment the commuters from New Jersey who often travel through Penn Station to their jobs in New York.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

(Mr. CAMPBELL assumed the chair.)

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. LAUTENBERG. Mr. President, it is with some mixed emotions that I bring before the Senate the conference report accompanying H.R. 4556, the Transportation appropriations bill for fiscal year 1995.

This bill, like many of the appropriations bills passed in recent days, is very, very tight. While we were successful in making progress and investing scarce dollars in critical areas of our transportation infrastructure, we could not do all that we would have liked to do in a great many areas.

I hope that in future years, as we seek to prioritize Federal investments within the freeze on discretionary spending, we are going to be able to do better by critical transportation programs that do so much to promote prosperity and jobs in our country.

In that context, this conference report focuses on three goals.

First, it does achieve real spending restraint. For the purposes of conference, we faced a discretionary spending ceiling of $13.704 billion in budget authority and $36.513 billion in outlays. That means that our ceiling for conference was below the level we were required to work under when passing the Senate bill. As a result, we faced the very difficult task of meeting our Nation's needs and the Senate's priorities with less money.

Second, consistent with our limited funds, we made progress toward meeting our national transportation needs. The President spelled out his priorities in his Budget message. He said that we needed to increase investment in some critical areas in order to modernize systems and meet our national needs. Specifically, he called for increased investment in a number of areas: in the highway obligation ceiling; the capital part of mass transit formula grants; the FAA's facilities and equipment account; Coast Guard capital expenses; and Amtrak capital assistance. This bill makes a down payment on many of those investments.

The bill rejects, however, some of the President's proposals. He recommended deep cuts, for example, in transit operating assistance. We rejected that recommendation and, within very tight overall funding limits, restored more than half of the cut.

Third, consistent with limited funds and an emphasis on national priorities, we protected the interests of the Senate. In terms of policy differences, the Senate position prevailed in several key areas.

For example, one contentious area involved the Coast Guard. The House bill contained a sizable cut in Coast Guard operating expenses. We were successful in restoring much of that proposed cut. Over the last few months, we have seen the Coast Guard operating in overdrive, interdicting thousands of Cuban migrants and participating in Operation Restore Democracy in Haiti. I believe we all agree that now is not the time to impose deep cuts in the Coast Guard's budget.

In another area, regarding rail, the conferees agreed to many of the Senate provisions providing enhanced investment in our Nation's passenger rail infrastructure. The House bill made significant cuts below the President's request in rail capital investment, and I am pleased to report that we were able to reverse their position.

Finally, the House voted to eliminate funding for the Interstate Commerce Commission by more than 40 votes. The conference agreement, like the Senate bill, does not propose the elimination of the ICC. However, it does contain a very sizable reduction in the agency's overall budget and staffing. It will no longer be business as usual at the Interstate Commerce Commission.

Beyond these policy disputes, there were also differences between the House and Senate about specific projects in the transit and highway areas. In general, the Senate recognized fiscal reality and was inclined to fund existing projects, while the House moved to start a number of new projects without, in my opinion, giving due consideration to our ability to pay their total costs. As a result of these different approaches, we essentially divided the available funds and allowed each body to make decisions within its allotment. That meant there simply was not enough money to fully fund all members' individual transit or highway projects. We did the best we could with the resources available to us. And I want to thank all members for their cooperation and understanding through an extremely tight funding process.

I specifically want to thank the chairman of our committee, the President pro tempore, Senator BYRD. I have been disappointed by the misrepresentations and mischaracterizations of Senator BYRD's advocacy for a critical transportation project in his State. Those of us who work closely with this bill appreciate the issue of regional balance and the importance of recognizing that individual States differ in the amount and kind of infrastructure needed. As he has on the Senate floor many times, throughout the transportation conference Senator BYRD argued forcefully for the national benefit of infrastructure investments. I thank Chairman BYRD for the extraordinary degree of cooperation, courtesy and grace he demonstrated during the House-Senate conference.

I also want to say a special thank you to the chairman of the House transportation subcommittee, Congressman BOB CARR of Michigan. Congressman CARR has been an excellent leader of the subcommittee. His knowledge and concern for transportation matters is vast, and I hope he will be in a position to share it with us as a Member of the Senate.

I also thank my distinguished colleague from the other side of the Hudson River from New Jersey, Senator D'AMATO, who is the ranking member of the Transportation Subcommittee for his input and cooperation throughout the process. It was not easy for him either. The conference agreement before us is truly a bipartisan product. Indeed, it passed the House by voice vote without as much as a single objection.

So, Mr. President, at this time I would like to yield the floor so that Senator D'AMATO might make any statement that he would like to make.

Mr. D'AMATO. My distinguished colleague from New York, Senator MOYNIHAN, I think has an announcement of some consequences that he would like to make.

With the permission of the Chair, I would like to yield the floor to Senator MOYNIHAN.

Mr. LAUTENBERG. Absolutely.

The ACTING PRESIDENT pro tempore. The senior Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, may I first express the genuinely heartfelt thanks to the two hugely able and effective managers of this bill, the Senator from New Jersey and my colleague and my friend, Senator D'AMATO, from New York.

This measure contains the $40 million for the rebirth of Pennsylvania Station that will bring to $50 million all we can spend next year. Construction can start next week, thanks to these two valiant Senators. I want to make that remark.

Mr. D'AMATO. Mr. President, I rise in support of the conference report on H.R. 4556, the fiscal year 1995 appropriations bill for the Department of Transportation and related agencies.

This conference report details the final agreements of the House and the Senate conferees on fiscal year 1995 funding for $14.266 billion in transportation programs. These programs include highways, transit, U.S. Coast Guard, airport grants, air traffic control personnel and equipment, rail freight assistance, Amtrak passenger rail service, as well as other programs.

The report displays funding for covered programs at $482 million above the administration's request, and $1.23 billion above current levels. Our bill reflects Senate priorities for funding projects that promote safety, congestion mitigation, air quality enhancement, and new technologies. For example, I am pleased that the transit discretionary grant program for buses contains $7.3 million for Nassau County, Long Island to advance its national leadership in putting alternative fuels buses on the roads. We are striving through this program to encourage local transit authorities to acquire buses using cleaner-burning fuels, and we will all breathe easier for it.

The conferees have cut the funding for the Interstate Commerce Commission by one-third, to $30.3 million. The Trucking Industry Regulatory Reform Act of 1994, signed by the President on August 26, 1994, has stripped away many of the ICC's useless and obsolete functions such as tariff filings, and related regulatory and enforcement activities. Congress has made great progress this year in dealing with the dinosaur known as the ICC; however, I agree with my colleagues on the House side, Mr. KASICH and Mr. HEFLEY, that more needs to be done. In the coming year I expect to closely examine the ICC's budget as we debate whether this independent agency is worth the money it costs taxpayers, or whether its remaining functions can appropriately be performed by other agencies.

HIGHWAY DEMONSTRATION PROJECTS

The conferees agreed on a total pot of $352 million for 127 highway demonstration projects. The final agreement split the pot equally between House and Senate projects, giving each body $176 million for projects it initiated. The House funded 102 projects; the Senate funded 25 projects.

Much controversy surrounded the funding of these highway projects. In conference, $60 million was cut from two West Virginia highway demonstration projects and then reallocated to House and Senate projects. About $52 million was reallocated to 18 Senate projects, restoring all but 10 projects to their Senate-passed levels. Funding for 1 of these 10 projects, the Pittsburgh Busway was restored under transit grant programs. The balance, about $8 million was allocated by the House to its highway projects. Senate projects were included based on a showing that they were authorized to receive general funds in current law, or were ongoing projects that had previously received funds. No new starts were included.

We have heard much about fairness in allocating these highway funds. Our final conference agreement addresses those concerns by providing a more equitable balance among the Senate projects. However, the House's problems in satisfying their project requests go beyond how much money one State's projects received in the Senate bill. The House undertook a great burden when it funded over 70 new start projects contained in the House-passed version of the National Highway System Designation Act of 1994, H.R. 4385. The Senate version of the NHS bill has no such demonstration projects. Next year, and in the years to follow, the bills will come due to pay for these dozens of new projects.

TRANSIT DISCRETIONARY GRANTS: NEW STARTS

Thirty-two transit new start projects were funded at $646.67 million as proposed by the House, instead of $595 million as contained in the Senate bill.

This program continues to balloon-up in costs as we fund many projects that are in preliminary stages, as well as older projects whose expensive construction costs are coming due for payment. This year, the Senate earmarked funds for a total of 15 projects, including only 5 of the same projects as contained in the House bill. This process left out important ongoing projects, particularly in the States of Texas and Florida, that have strong support in the Senate. The House had earmarked a total of 25 projects.

The allocations for these projects have been controversial, as Members seek more funds for projects in their States. This year a new process was followed whereby House and Senate projects were considered separately in conference. This approach leaves the fate of Senate-supported projects mainly in the hands of the House conferees, and vice-versa. I do not think that this is an approach we should repeat in the future. A full picture of new start allocations needs to be before all conferees as we make decisions on a program with national impacts. Moreover, as transit operating dollars continue to shrink—$710 million is contained in this bill—11.5 percent cut from current levels—serious thought must be given to the projected ridership of these projects and who will pay to operate them as we proceed to make decisions about new start spending in the future.

TRANSIT DISCRETIONARY GRANTS: BUSES

The conference agreement provides a total of $353.3 million for 85 discretionary grants for buses and related facilities. The pot of funds left unearmarked and reserved for the Secretary's discretion was reduced from $197.5 million in the Senate—and from $51 million in the House—to $30 million in the final agreement.

Mr. President, I am pleased that we were able to come to agreement about the many issues contained in this legislation. A specific issue of local importance to New York State, is the $40 million contained in this bill to redevelop Amtrak's decrepit Penn Station in New York City at the nearby James A. Farley Post Office. Penn Station is the Nation's busiest train station—500,000 people use it each day. Passengers desperately need the safety and operational improvements, as well as the enhanced facilities that this redevelopment project will achieve. Firm commitments have been made by State and local governments to fund their $100 million share of the project, and the Long Island Railroad has just completed its $200 million portion of the station.

In addition, $1.25 million has been made available for an oil spill response simulator at the State University of New York Maritime College at Fort Schuyler in the Bronx. There is currently no such response program in one of the busiest ports of the world—the Port of New York and New Jersey. This year, over 25,000 gallons of oil have been spilled in over 180 separate spills in this port. This investment in prevention will be well spent in protecting our waters, sensitive wetland areas, and shorelines.

Mr. President, this was not easy. Let me say that I think it took an extraordinary effort by the chairman, by Senator LAUTENBERG, and by all of our colleagues working together to see to it that limited resources were used in the manner and the way that could really make a difference.

I want to commend Senator LAUTENBERG for his leadership. It was not easy. I also want to commend all of the Members for working together to make this a reality.

I support adoption of this conference report, and urge my colleagues to support it as well.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. DORGAN). The Chair recognizes the Senator from West Virginia.

Mr. BYRD. Mr. President, the distinguished and very able chairman of the Transportation Subcommittee, Mr. LAUTENBERG, and the equally capable ranking minority member, Mr. D'AMATO, deserve great credit for their efforts in bringing this Department of Transportation appropriation conference report to the Senate. This bill is the product of many months of hard work, of thoughtful analysis, and of the many hours of testimony that were taken on the 1995 Department of Transportation budget. This conference agreement represents a fair and balanced approach to our Nation's transportation needs. It recognizes the transit needs of those States which have large populations and population densities. It also provides for the transportation needs of smaller, less populous States whose major transportation systems are their highways.

I compliment the chairman and ranking minority member, as well as their excellent staff: Pat McCann, Peter Rogoff, Joyce Rose, Anne Miano, and Dorothy Pastis.

TRANSPORTATION FUNDING LEVELS

Mr. President, I have a table which sets forth information which was provided to the Appropriations Committee by the Department of Transportation relative to the funding levels for selected programs that will be provided for fiscal year 1995 to certain States pursuant to existing statutory authority. That authority allows obligations to be incurred from the Highway and Airport and Airway Trust Funds up to the levels set in the 1995 Department of Transportation appropriation bill. Also, under ISTEA, States will receive mass transit grants for both capital projects and operating costs in the amounts shown in the table.

I hope that this information will be helpful and instructive to those who may have the mistaken impression that there is unfairness in the distribution of Federal transportation dollars.

Funding for the District of Columbia is not included on the table, but for comparison, I would point out that the 1995 Transportation conference agreement contains $200 million for Metro construction, $9.2 million in interest payments on WMATA's bonds; $24 million for transit operating subsidies; and $17.3 million for rail modernization grants.

Mr. President, I ask unanimous consent that the table that I have referred to, entitled "Fiscal Year 1995 Funding of Selected Department of Transportation Programs," be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

FISCAL YEAR 1995 FUNDING OF SELECTED DOT PROGRAMS

[In whole dollars]

State	Federal-aid Highways				Airport grants [2]	Transit formula [3]
	Obl. Limit	1994 MA	ISTEA Demos [1]	Total		
California	1,341,338,030	189,625,000	51,451,000	1,582,414,030	54,368,042	360,593,297
New York	845,225,887	0	45,348,000	890,573,887	28,072,738	440,845,878
Texas	953,452,461	119,393,000	34,798,000	1,107,643,461	48,246,684	125,918,186
Florida	521,735,792	161,433,000	27,427,000	710,595,792	32,744,685	110,308,020
Pennsylvania	653,853,400	53,342,000	129,477,000	836,672,400	21,280,388	129,844,979
Illinois	568,422,288	0	24,825,000	593,247,288	21,760,495	176,760,452
Virginia	293,977,580	77,643,000	20,602,000	392,222,580	13,489,835	41,837,189
West Virginia	148,457,229	0	48,853,000	197,310,229	4,507,633	5,646,635
All other	11,833,537,333			11,833,537,333	1,225,529,500	1,108,245,364
Total	17,160,000,000	601,436,000	382,781,000	18,144,217,000	1,450,000,000	2,500,000,000

[1] Represents 26% of estimated available balances of ISTEA demo funds to the above states through FY 1995—actual obligations will likely vary from these estimates.
[2] Assumes current enplanement numbers will be changed as finals become available; includes $140 M entitlement carryover.
[3] Distribution will change because new Sec. 15 performance numbers will be used for publication in Federal Register Oct. 1994.

Mr. BYRD. Mr. President, I also ask unanimous consent that an editorial, the first of a series in the Martinsburg, West Virginia, newspaper, The Journal, under date of September 29, 1994, be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Journal (Martinsburg, WV), Sept. 29, 1994]

BYRD'S CRITICS OVERLOOK TRUTH WHILE FLINGING ACCUSATIONS

U.S. Rep. Frank Wolf, R-Va., demonstrated in the last two weeks that when all other rational arguments fail to bolster a weak argument, try slander and lies. Naive constituents will love you, big-money contributors will be generous and the Washington Post will lionize you.

In the last two weeks, Wolf has again taken on U.S. Sen. Robert C. Byrd, D-W.Va. Wolf, the ranking Republican on the House Appropriations transportation subcommittee, targeted Byrd's request for $140 million to be spent on engineering and construction of Corridor H. Last week, on the floor of the House of Representatives, Wolf created a cleverly constructed argument in which he contended that Byrd, chairman of the Senate Appropriations Committee, was making off with almost all of the federal government's money for highway construction.

On Sept. 21, he argued that West Virginia, with only 1.7 million people, was going to receive $140 million. He said eight states with more than 100 million people were only going to get $10 million. "That's not fair," declared Wolf.

Here-here, said the Post, in an editorial that curiously ran the next day. In a remarkable quick rewrite of Wolf's speech, the Post not only repeats Wolf's claim that a small state is getting a lot of money, but also prints, almost verbatim, Wolf's contention that the state would receive $133 million more than could be used in a four-month time period.

What Wolf and the Post don't say is that Corridor H is not new. It was proposed by the Appalachian Regional Commission nearly 25 years ago as a development highway. It was intended to complement the interstate highway system. Most of the easy corridors have been built. Most of the remaining projects are in, you guessed it, West Virginia.

Wolf and the Post also failed to note that the number of accidents in the Corridor H area are above the statewide average, and the state as a whole ranked second in the country in traffic deaths for each 10,000 motor vehicles registered. That's because most of the roads in the state were built in the 1930s and reflect what Byrd calls "a happenstance response to topography rather than strategic planning."

The Post and Wolf conveniently fail to mention that it isn't cheap to build highways in Appalachia. The costs of completing most Appalachian system corridors is about $10.9 million per mile. But because of the extremely difficult and environmentally sensitive terrain, Corridor H will probably cost more than $18 million per mile to build.

The Post and Wolf also failed to note that West Virginia will receive little money for airports and mass transit relative to states that have sophisticated systems and need the big bucks.

And guess who is going to pocket lots of mega bucks for airports and mass transit?

The federal government will have spent $9 billion on Washington D.C.'s 103-mile Metro system when it is completed. The bill that Wolf and the Post fume about provides a $200 million subsidy—no other word fits—for the operation of the Metro next year. That doesn't include the $27 million subsidy for the Washington D.C. bus system.

Wolf says he is protecting the interests of the people in Shenandoah County, Va., who don't want Corridor H spoiling their bucolic existence. Yet Wolf and his political buddy, Virginia Gov. George Allen, are demanding the federal government cough up big bucks for a new interchange on Interstate 66 that will serve the Walt Disney Co. theme park, "America." There are a lot of folks in that area who don't want the theme park or the new interchange, let alone a $166 million subsidy, but they must not count to Wolf—they don't live in Wolf's district.

Wolf is using the opposition to Corridor H in Shenandoah County as a red herring to disguise his real fear—the loss of more federal "back offices" to West Virginia and other states. He spoke to that concern when he recently announced he was opposed to the upgrade of W. Va. 9. In this computer age, it doesn't really matter where an office building full of bureaucrats is located. All that counts is the building be linked to a reasonably sophisticated and reliable telephone system. Thanks to Bell Atlantic, West Virginia has one of the most sophisticated telecommunications systems in the world. It also costs a whole lot less to do business in West Virginia than it does—you guessed—in Northern Virginia. The cost of labor, construction and housing is less. Taxes also are less.

Every time Byrd makes what is now a routine announcement about another federal agency moving to the Mountain State, a shiver must go up and down the spines of all of northern Virginia's movers and shakers. Those glad tidings mean the federal government will spend less in and around Washington D.C. That means fewer people who will buy houses or go to shopping centers in northern Virginia. That also means small but tangible numbers of people won't be patronizing businesses, that advertise in the Post. It won't take long for those businesses to rethink their advertising strategies.

Wolf and the Post think they have won this round. The transportation budget only allocates $40 million for Corridor H this year. Wolf can claim he humbled the all-powerful Byrd, the Post editors can crow how they struck a mighty blow against the evils of pork barrel politics.

But not everybody who works within the Beltway is quite so myopic. One congressional staffer who works for the House Appropriations Committee said Wolf's and the Post's criticism of Byrd only enhances Byrd's reputation in West Virginia. It also only causes nothing but fury for most West Virginia Republicans. The West Virginia's eastern region is viewed as fertile ground for them. Wolf's diatribes only undercuts their efforts.

Next year is another session of Congress and, if Byrd wins re-election, we shall see who has the last laugh.

Mr. DOMENICI. Mr. President, I rise in support of the conference agreement accompanying H.R. 4556, the Transportation and related agencies appropriations bill for fiscal year 1995.

The pending conference agreement provides a total of $14.3 billion in new budget authority and $12.4 billion in new outlays to fund the operations of the Department of Transportation agencies for the upcoming fiscal year. These agencies include the Federal Highway Administration, Federal Aviation Administration, the Federal Transit Administration, the Coast Guard, Amtrak, the Federal Railroad Administration, and the National Highway Traffic Safety Administration.

When outlays from prior-year budget authority and other completed actions are taken into account, the final bill totals $14.3 billion in budget authority and $37.1 billion in outlays for fiscal year 1995.

I commend the distinguished chairman and ranking member of the subcommittee for the hard work they have done on this important bill.

They have brought back to the Senate a final bill that is within the subcommittee's 602(b) budget allocation by $10 million in budget authority and less than $500,000 in outlays.

I thank the distinguished subcommittee leadership for the consideration and support they gave to programs important to my home State of New Mexico, including the completion of three ongoing projects. I urge the adoption of the conference agreement.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator suggests the absence of a quorum. The absence of a quorum is noted. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE I-265 EXTENSION BRIDGE FUNDING

Mr. FORD. Mr. President, I wonder if the manager of the bill, my good friend from New Jersey, will yield to discuss the I-265 funding in the conference report?

Mr. LAUTENBERG. I would be happy to discuss this issue with the senior Senator from Kentucky.

Mr. FORD. Mr. President, Senator MCCONNELL, Senator LUGAR, Congressman HAMILTON, and Congressman MAZZOLI have all supported the need for a new bridge linking southern Indiana with the Louisville, KY region. We are pleased the House and Senate agreed in this conference report to begin funding this project by including $500,000 for the I-265 extension.

Mr. MCCONNELL. Mr. President, will the Senator yield for a question?

Mr. FORD. I would be pleased to yield to my colleague from Kentucky.

Mr. MCCONNELL. First, I would like to thank the chairman and ranking member for including this project in the bill. Would my friend agree that there is a consensus on a need for a new bridge in the area and that local officials from both States have yet to agree on the exact location of the bridge?

Mr. FORD. That is my understanding.

Mr. LUGAR. Mr. President, will my good friend, the senior Senator from Kentucky, yield for a question?

Mr. FORD. I would be happy to yield to my good friend, the Senator from Indiana.

Mr. LUGAR. As I understand the problem my State of Indiana and the Commonwealth of Kentucky agree there is a need for a bridge in the area of Clark County, IN, Louisville, KY area, and Jefferson County, KY area, and that our States have not yet reached an agreement on the location.

Mr. FORD. The Senator is correct.

Mr. President, I say to my friend from New Jersey given the fact that the two States have not yet reached an agreement it is therefore my understanding that the funding in the conference report is not site-specific?

Mr. LAUTENBERG. I would say to my friend, the senior Senator from Kentucky, and to my friends, the senior Senator from Indiana and Senator MCCONNELL, that the conference committee by designating the project I-265 extension does not mean that we have agreed to a site-specific location in the greater metropolitan area, but rather, the States of Kentucky and Indiana must come to an agreement on the specific location for the bridge.

Mr. D'AMATO. Would the Senator from Kentucky yield?

Mr. FORD. I would be happy to yield to the ranking member of the subcommittee.

Mr. D'AMATO. Mr. President, I want to point out that it is my understanding as well, that the I-265 project funds are to be used only at the location that is decided upon by the States of Kentucky and Indiana.

Mr. FORD. I thank the chairman and the ranking member for their remarks.

THE 5-PERCENT BONUS OBLIGATION LIMITATION

Mr. BAUCUS. Mr. President, I would like to clarify the chairman's intent with regard to the absence of a provision in this conference report. Is it the chairman's intent that, as in last year's transportation appropriations bill, lack of appropriations bill language affirming or restating the 5-percent bonus obligation limitation program should not be interpreted by the Department of Transportation to mean that the program should not be available to States in fiscal year 1995? That in fact, the reference to this program in section 1002(f) of the Intermodal Surface Transportation Efficiency Act [ISTEA] is sufficient reference to continue the program in fiscal year 1995?

Mr. LAUTENBERG. The Senator is correct. It is not my intention to make the 5-percent bonus obligation limitation program unavailable to States that meet the appropriate requirements in fiscal year 1995. The authorization statute in the ISTEA is sufficient reference to continue the program in fiscal year 1995.

Mr. HATFIELD. Mr. President, I want to thank Chairman LAUTENBERG for his help this year and for crafting an excellent and equitable 1995 Transportation appropriation bill.

Mr. President, the statement of managers accompanying the conference report includes language that modifies language passed by the Senate concerning the South/North rail line in Portland, OR and Vancouver, WA. Would my colleague please explain the modification made by the conferees?

Mr. LAUTENBERG. The Senate language directed that funds made available to Portland in interstate transfer monies be used for preliminary engineering and environmental impact studies for the South/North corridor project. The conferees have removed the requirement that these funds be used for this purpose creating flexibility for the Portland metropolitan area to use these formula funds on the South/North corridor or any other eligible project.

Mr. HATFIELD. I thank my colleague for that clarification.

MINISTERIAL ROAD

Mr. CHAFEE. Mr. President, I thank the distinguished chairman, Senator LAUTENBERG, and the distinguished ranking member, Senator D'AMATO, of the Subcommittee on Transportation and Related Agencies of the Appropriations Committee for including funds in the conference agreement for H.R. 4556 that I requested for Ministerial Road in Rhode Island. Amendment No. 157 in the conference report, House Report 103-752, includes the Senate language contained in section 324 of the Senate bill. Section 324 as included in amendment No. 157 provides $100,000 of existing funds for scenic byways to provide assistance to a community group incorporated for the purpose of protecting the scenic qualities of a designated scenic byway. The intent of this provision is to provide the existing $100,000 to the Ministerial Road Preservation Association for the purpose of developing and evaluating alternative design standards for Ministerial Road in Rhode Island. I would ask the distinguished chairman and ranking member if they agree with my characterization of amendment No. 157 in the conference agreement?

Mr. LAUTENBERG. The Senator from Rhode Island is correct. The intent of the conference agreement is to direct the Federal Highway Administration to provide these funds to the Ministerial Road Preservation Association in Rhode Island.

Mr. D'AMATO. The Senator from Rhode Island is correct.

Mr. CHAFEE. I thank the Senators for their response, and again thank them for including these funds for Ministerial Road.

UNANIMOUS-CONSENT AGREEMENT

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that a vote occur at 11:45 this morning.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

STATEMENT ON THE TRANSPORTATION APPROPRIATIONS CONFERENCE BILL

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 4556, the Transportation appropriations conference bill and has found that the bill is under its 602(b) budget

authority allocation by $10 million and under its 602(b) outlay allocation by $0 million.

I compliment the distinguished manager of the bill, Senator LAUTENBERG, and the distinguished ranking member of the Transportation Subcommittee, Senator D'AMATO, on all of their hard work.

Mr. President, I have a table prepared by the Budget Committee which shows the official scoring of the Transportation appropriations conference bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 4556—FY 1995 TRANSPORTATION APPROPRIATIONS—CONFERENCE BILL

[In millions of dollars]

Bill summary	Budget authority	Outlays
Discretionary Totals:		
New spending in bill	13,694	11,951
Outlays from prior years appropriations	.....	24,595
Permanent/advance appropriations	.....	.....
Supplementals	.....	−34
Subtotal, discretionary spending	13,694	36,513
Mandatory totals	571	574
Bill total	14,265	37,087
Senate 602(b) allocation	14,275	37,087
Difference	−10	−(*)
Discretionary Totals above (+) or below (−):		
President's request	482	−93
House-passed bill	116	71
Senate-reported bill	−40	−87
Senate-passed bill	−40	−87
Defense	.....	.....
International Affairs	.....	.....
Domestic Discretionary	13,694	36,513

Mr. MURKOWSKI. Mr. President, today we will vote on the passage of the conference agreement to the Department of Transportation appropriations. While I intend to vote for this report because it provides funding for several important programs in my State, I do have some serious concerns about two provisions.

The conferees have endorsed an agreement between the Alaskan aviation community and the FAA to further enhance flight services in Alaska.

The report language notes the negative impact of the closing of the Bettles flight service station which served the vast northern half of my State. The FAA Alaska Region is presently assessing the possibility of reactivation of this station on a seasonal basis. As the report language reiterates, Bettles may be reactivated as a flight service station at the discretion of the Administrator of the FAA.

I want to make it perfectly clear that I believe this station should be reactivated seasonally and that its reactivation should have been part of this agreement. I also believe that any surplus funds from the rotation plan which are not used to carry out the rotational staffing process set up in the agreement should be set aside for the reactivation of the Bettles station in the event that the station is recommended for flight service status.

The other issue concerns the deletion of my amendment that would prohibit funds to be used to restrict overflights of Federal lands within Alaska. I am disappointed by this deletion since Alaskans depend upon aviation as a basic means of transport, just as other Americans depend upon roads. Not only do Alaskans fly more than citizens of the lower 48 States, but we also fly over Federal land more often because 58 percent of our State is owned by the Federal Government. Any effort to restrict travel over Federal lands contains the possibility of cutting people off from their homes, hospitals, and supply stores.

While other parks in America may face overflight problems, Alaska's do not. Under ANILCA, Alaskans were guaranteed access to their lands by traditional means. This includes aircraft. Though my amendment was not adopted in the conference report, I will continue to work to ensure that Alaskans are able to access what was promised to them.

MORNING BUSINESS

Mr. LAUTENBERG. Mr. President, I now ask unanimous consent that the Senate turn to morning business with Senators permitted to speak therein until such time as the vote occurs.

The PRESIDING OFFICER. Without objection, it is so ordered.

USING THE FILIBUSTER

Mr. SIMPSON. Mr. President, yesterday I addressed the Senate on the issue of why the Republicans, frequently with the assistance of Democrats, have utilized the filibuster during this Congress. The real justification for availing ourselves of this procedural right is a lack of honest, real—not rhetorical—consultation. I gave several examples, and I will not belabor the point.

Subsequent to my remarks, my distinguished colleague from California, Senator FEINSTEIN came to the floor to offer what she believed was an example of why my remarks were in error. She cited the California Desert bill, S. 21.

I ask unanimous consent that a letter dated September 23, 1994, which I received from five Republican Congressmen who represent that area be printed in the RECORD after my remarks.

The letter speaks for itself. Essentially, it corroborates my earlier remarks which asserted that the common denominator of each use of the filibuster is a lack of real consultation. These Congressmen from the affected area say that their suggestions for improving S. 21 were "repeatedly ignored," and that "none of our concerns saw the light of day." They cited the "hardball tactics" utilized by the proponents of the bill, and urged me to "oppose the motion to invoke cloture."

I intend to. I not only agree with the Congressmen on the merits, but I am painfully aware of the process which they have described. It is yet another exhibit in pleading the case I was making yesterday.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 23, 1994.

Hon. ALAN SIMPSON,
Senate Minority Whip, The Capitol, Washington, DC.

DEAR SENATOR SIMPSON: As representatives of the California Desert, we would like to convey our strong opposition to the Senate consideration of S. 21, the California Desert Protection Act, and urge you and your colleagues to oppose the motion to invoke cloture.

S. 21 is based on a myth—that the deserts of California are currently unprotected, and open to the ravages of greedy corporations and careless off-roaders who would destroy the desert for pure pleasure or the almighty dollar. This is a useful emotional lever, but it is patently false. The facts are these: in its passage of the landmark Federal Land and Policy Management Act of 1976 (FLPMA), Congress among other things mandated that a plan be prepared for the protection of the California deserts. At the direction of Secretary Cecil Andrus, an Advisory Committee representing the various desert user groups was formed to analyze and evaluate the California Desert Conservation Area for wilderness or nonwilderness designation. After an extensive outreach program which included years of public hearings and over 40,000 public comments, the Advisory Committee proposed that 2.3 million acres in 62 wilderness areas be preserved—far less than the eight million acre land grab we are considering today. Although these recommendations were introduced by the five desert Congressmen as H.R. 2379, our bill was never given a proper hearing by the House Committee on Natural Resources.

The second flaw of S. 21 is the enormous cost to the taxpayers of acquiring and managing the nearly eight million acres of proposed wilderness and park land protected by the bill. Not only does this measure fail to provide the funds necessary to acquire private inholdings, but it also neglects the 26-year, $1.2 billion backlog in land acquisition faced by the National Park Service. Moreover, the Park Service admits an additional 37-year, $5.6 billion backlog in capital construction and maintenance costs. By adding over three million acres to our already beleaguered system, three certainties will result: increases in visitation, decreases in budgets and staff, and accelerated deterioration of our National Parks.

The third, and perhaps the most troubling, shortcoming of S. 21 is the omission of the thoughts and views of desert residents—most of whom are the best and most knowledgeable caretakers of this resource. Since this debate began, we have collectively received thousands of calls and letters from people who fear they will be locked out of the desert they have enjoyed for generations. Under wilderness designation, areas will be accessible only on foot or on horseback, a daunting challenge considering the extreme

heat and ruggedness of the terrain. Only the most physically able will be able to enjoy these expanses, underscoring the lack of foresight exercised by the armchair environmentalists who drafted S. 21.

We had hoped to help Senator Feinstein craft a sound desert bill in this Congress, but our offers of assistance were repeatedly ignored. Aside from a few minor concessions, none of our concerns saw the light of day until the legislation reached the House floor. This treatment and the resulting lack of balance in the compromise bill leaves us with no recourse but to oppose S. 21. It angers us that we have been painted into this corner, and we resent the hardball tactics of Senator Feinstein and a small band of her environmental allies. Without a doubt, the California Desert Protection Act will incur consequences and set unwanted precedents that will affect not only California, but also every other state in the Union. For these reasons, we respectfully request that you oppose the motion to invoke cloture. In a time when the federal government should be reined in, we are facing a dangerous expansion of federal authority under this legislation—at a price taxpayers cannot afford.

We thank you for your time and your consideration, and are available to you individually or as a group should you have any questions.

Sincerely,

JERRY LEWIS.
AL MCCANDLESS.
DUNCAN HUNTER.
BILL THOMAS.
HOWARD "BUCK" MCKEON.

TRIBUTE TO THE LATE MRS. LUCILE SIMS

Mr. THURMOND. Mr. President, I rise today to pay tribute to a dear friend, Lucile Sims, who recently passed away at the age of 100.

In the course of her life, Mrs. Sims became involved in a number of activities and made many contributions to South Carolina. A graduate of Winthrop College, an institution that specialized in training teachers, Mrs. Sims held several jobs in the educational field which included teaching in the Orangeburg public schools, starting one of the area's first kindergartens, and beginning the first nursery for underprivileged children.

Additionally, Mrs. Sims wrote a column for the Editor's Copy Syndicate, an editorial and feature service for newspapers that she and her late husband, Hugo S. Sims, Sr., founded. In a tribute to the Sims' foresight, the Editor's Copy continues to be a valuable tool for journalists.

Mrs. Sims activities and contributions went beyond that of her teaching and writing. During World War II, she served as the chairman of the Women's Division of the Civilian Defense Force; she was a lifelong member of the St. Paul Methodist Church; and she was an enthusiastic participant in Orangeburg's Little Theater. Her work as a civic leader, and dedicated mother led to her being awarded the title of Mother of the Year in 1959, and I was pleased to host a delegation luncheon in her honor that March.

Mr. President, Mrs. Sims was a woman who was a friend to everyone, regardless of their race or creed, and she worked hard to help make her community a better place for all of its citizens. This most gracious lady will be missed by all those who knew her, and I would like to take this opportunity to extend my deepest sympathies to her three sons; former Congressman Hugo Sims; Edward Sims, publisher of the Editor's Copy; and, Henry Sims, who has served in many of South Carolina's State offices. Each of them can take great pride in their mother and her many accomplishments, as well as their own.

PROTECTING YELLOWSTONE NATIONAL PARK'S GEOTHERMAL RESOURCES

Mr. BURNS. Mr. President, I rise today as a cosponsor to the amendment filed today to protect Yellowstone National Park's treasured geothermal resources.

Montana is proud to host our Nation's oldest national park. Yellowstone is the crown jewel of our National Park System.

One of the biggest attributes of Yellowstone are the geothermal features. These features should be protected from harm's way, and we need to err on the side of caution. That's why I support H.R. 1137, the Old Faithful Protection Act.

H.R. 1137 protects Yellowstone's geothermal features by codifying the water compact which the State of Montana reached with the Federal Government. In addition, Wyoming and Idaho were given a 2 years' reach similar compacts, as well. These compacts regulate water permitting processes for a protection zone around Yellowstone to ensure that development outside the park won't harm our geysers inside the park.

There is good news and bad news about H.R. 1137. The bill has been reported out of the Senate Energy and Natural Resources Committee. However, an amendment was added which would exempt Wyoming and Idaho from the bill. I don't support that exemption.

Let all of us work together to protect Old Faithful.

I yield the floor.

STATEMENT ON THE NOMINATION OF LT. GEN. BUSTER GLOSSON, U.S. AIR FORCE

Mr. NUNN. Mr. President, the Committee on Armed Services has issued a report on the nomination of Lt. Gen. Buster Glosson, U.S. Air Force, to retire in grade, Exec. Rept. 103–34, which is printed and available in the Senate Document Room. As I observed on September 27, Lieutenant General Glosson's distinguished 29-year career includes: His service as an F–4 pilot in Vietnam for which he was awarded the Distinguished Flying Cross for 139 combat missions, primary responsibility for planning and implementing the air campaign in Operation Desert Storm, and service as the Air Force Deputy Chief of Staff for Plans and Operations.

The committee has placed in room S–407, for review by Senators, a number of documents related to this nomination, including the report of a special review panel, materials prepared by the inspector general of the Department of Defense, and other documents submitted to the committee by the Department of Defense which contain information which the committee has treated as confidential. The committee also will make available to Senators, upon request, redacted versions of the panel report and the inspector general materials.

Mr. President, the printed version of the committee's report contains a typographical error on page 11, in the paragraph beginning with the word "Fourth." The paragraph, in its entirety, should read as follows:

Fourth, if he is not confirmed to retire in grade as a three-star general, his retired pay will be reduced by approximately $6,700 every year. While the committee agrees that his improper communications merit serious administrative action, the committee does not believe that a single incident of non-criminal conduct in an otherwise distinguished career warrants an annual reduction of $6,700 in retired pay. The committee does not believe that one misstep, in light of his total career, warrants compounding the consequences he has already suffered by adding a $6,700 annual penalty.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, as of the close of business on Wednesday, September 28, the Federal debt stood at $4,672,476,525,565.65, meaning that on a per capita basis, every man, woman, and child in America owes $17,922.05 as his or her share of that debt.

BILL MOFFITT

Mr. KEMPTHORNE. Mr. President, in Idaho, we have a deep respect for individuals who give something back to their community. For the past 5 years, Bill Moffitt has been an active member of the Idaho Falls community and a solid contributor to a number of causes within the area.

While serving as president of Westinghouse Idaho Nuclear Co. [WINCO], Bill Moffitt has established himself as a true friend to the people of Idaho Falls. Most folks would use just a few words to describe Bill; a good citizen, dedicated to public service.

Bill always seems to be looking for a way to help out, either as an individual, or through his work. He currently serves as president of the Grand Teton

Council of the Boy Scouts of America, as deputy campaign chairman for the United Way, and as vice president of the Greater Idaho Falls Chamber of Commerce.

Bill also served as president of the Excellence in Education Fund and is on the board of the local economic development council. He has been a supporter of Junior Achievement and Westinghouse Programs designed to encourage economically disadvantaged youth to remain in school.

For his efforts and devotion to the community, the Idaho Falls Civitans Club named Bill Moffitt its 1992-93 Citizen of the Year.

In the corporate world, Bill is seen as a true leader. His ability to lead is centered on the fact that he demonstrates a genuine belief in his employees. As the president of WINCO, Bill has continued a tradition of a friendly and strong work ethic that permeates throughout the company.

Bill began his career in the nuclear industry while serving in the U.S. Navy's nuclear submarine program. He joined Westinghouse in 1971 at Hanford, WA. While there, he was responsible for the Fast Flux Test Facility and later managed Operations Support Services. He first came to Idaho as WINCO's production manager before moving on to becoming general manager of the Waste Isolation Division in Carlsbad, NM. He returned to WINCO as president in 1989.

With the consolidation of the Department of Energy contract at the Idaho National Engineering Laboratory, Bill now moves back to Hanford where he will become the executive vice president of Westinghouse Hanford.

Mr. President, this senator and the people of Idaho Falls are losing a good friend, a good neighbor, and a good citizen, and I wish Bill and his wife Jeanne all the best in their new endeavor.

EXCELLENCE IN EDUCATION

Mr. GORTON. Mr. President, today I would like to recognize three outstanding Washington State schools. One each at the upper elementary, middle, and high school level which are currently participating in the We the People. . . The Citizen and the Constitution Program. Each of these schools demonstrate excellence in education and have implemented this program which helps students understand the history and principles of our constitutional government.

While at home over the January recess, I organized a meeting of over 200 parents, teachers, administrators, and students. At this conference I listened carefully to the concerns and ideas of those in attendance. While I heard many varied and different suggestions, one theme was constraint. Innovative and resourceful programs which educators and community members work hard to plan and execute deserve more recognition. I therefore promised to recognize, on a monthly basis, a school or school district program that is outstanding and innovative. Bow Lake Elementary School in SeaTac, Cascade Middle School in Seattle, and Kelso High School in Kelso are schools deserving and worthy of such recognition.

The We the People . . . The Citizen and the Constitution Program is funded through the Department of Education by an act of Congress. The program focuses on the U.S. Constitution and Bill of Rights and fosters civic competence and responsibility among elementary and secondary school students in both public and private schools. Students who participate in the program learn critical thinking and analytical skills while developing a reasoned commitment to the fundamental principles and values of our constitutional democracy.

Again, I congratulate these three outstanding schools. It is a tribute to the hard work of the teachers, school officials, students, and the commitment of the parents and the community to have such schools representing Washington State. These qualities of excellence are necessary for tomorrow's schools and for fostering a continued awareness of our Nation's constitutional past. I hope their mission and vision of excellence in education will continue to spread across Washington State and the country.

BELLE FOURCHE IRRIGATION PROJECT—S. 1786

Mr. JOHNSTON. Mr. President, on September 26, the Committee on Energy and Natural Resources filed the reports to accompany S. 1988, the Stagecoach Reservoir Project Act of 1993, and S. 1786, an act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes.

At the time these two reports were filed, the Congressional Budget Office had not submitted its budget estimates regarding these measures. The committee has since received these communications from the Congressional Budget Office, and I ask unanimous consent that they be printed in the RECORD in full at this point.

There being no objection, the estimates were ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington DC, September 27, 1994.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for S. 1786, an act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes.

Enactment of S. 1786 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill Number: S. 1786.

2. Bill title: An act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 26, 1994.

4. Bill purpose: S. 1786 would authorize the appropriation of an additional $10.5 million (in October 1, 1994, prices) for the rehabilitation of the Belle Fourche irrigation project. In addition, the bill would allow the repayment schedule of the $51 million already appropriated for the irrigation project to be renegotiated.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999
Authorizations:					
Estimated authorization of appropriations	1	4	6	.....	.....
Estimated outlays	1	4	5	1	.....
Direct spending:					
Estimated budget authority	(1)	(1)	(1)	(1)	(1)
Estimated outlays	(1)	(1)	(1)	(1)	(1)

[1] Less than $500,000.

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumed that the full amount authorized for the rehabilitation of the Belle Fourche irrigation project would be appropriated. Authorization estimates are based on a proposed project schedule obtained from the Bureau of Reclamation (BOR) and are adjusted for inflation. Outlay estimates are based on historical spending rates for similar projects.

The rehabilitation of the Belle Fourche irrigation project is 100 percent reimbursable. BOR does not expect to start receiving repayment of the $11 million of new authorizations until after fiscal year 2000. Finally, based on information from BOR, we expect that any change in the repayment of the $51 million already appropriated for the project because of a renegotiated repayment schedule would be insignificant for fiscal years 1995 through 1999. Any significant change would occur in the later years of the schedule. The repayments appear in the budgets as offsetting receipts, and thus any change would be considered direct spending.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. S. 1786 would allow the repayment schedule of the $51 million already appropriated for the project to be renegotiated, which could affect direct spending. CBO estimates that any change in direct spending for fiscal years 1995 through 1998 would be insignificant. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal years, in millions of dollars]

	1994	1995	1996	1997	1998
Change in outlays	0	0	0	0	0
Change in receipts	(1)	(1)	(1)	(1)	(1)

[1] Not applicable.

7. Estimated cost to State and local governments: The state share of the additional

project costs, to be paid by the State of South Dakota, would be at least $4 million.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: John Patterson.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1994.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1988, the Stagecoach Reservoir Project Act of 1993, as reported by the Senate Committee on Energy and Natural Resources on September 27, 1994. We estimate that enactment of this legislation would have no net impact on the federal budget or on the budgets of state or local governments. Enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

S. 1988 would authorize the Bureau of Reclamation (BOR) to sell or accept prepayment of a small reclamation loan held by the Upper Yampa Water Conservancy District (district) in Colorado. The loans were made to the district for construction of the Stagecoach Reservoir Project. The bill specifies that the price paid for the loan be calculated such that there is no net cost to the federal government on a present value basis. Once payment is received for the loan, title to the Stagecoach Reservoir would be transferred to the district.

BOR has indicated that, if S. 1988 is enacted, the agency would accept a prepayment from the district of the remaining loan balance for the Stagecoach Reservoir Project. The district owes a total of $8.7 million in principal and interest for the project. CBO estimates that, assuming the prepayment amount is calculated as specified in S. 1988, enactment of this legislation would result in no net cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
(For Robert D. Reischauer, Director).

RELATIVE TO THE SOO LINE/UNITED TRANSPORTATION UNION LABOR DISPUTE

Mr. CONRAD. Mr. President, I stand to introduce a joint resolution which I will send to the desk and ask my colleagues to take prompt action on it.

Today, I am introducing a resolution to temporarily extend the cooling-off period currently underway in the Soo Line/United Transportation Union labor dispute. I am pleased to be joined in introducing the resolution by Senator SIMON of Illinois.

On August 29 of this year, President Clinton used his authority under the Railway Labor Act to provide a cooling-off period and established a three-member Presidential emergency board to recommend a settlement in the dispute that had led UTU members to strike the railroad.

Unfortunately, that cooling-off period is scheduled to expire on November 11, after which a work stoppage could resume. At that point, Congress will not be in session and the work stoppage could wreak havoc on grain shipments. The problem we confront is one of timing. Harvest season is upon us, and major shipments will continue through the end of the year and beyond.

Mr. President, it is for that reason that Senator SIMON and I introduce this resolution to extend the cooling-off period.

Mr. President, I have always had reservations about involving the Federal Government in labor disputes. I have, for example, opposed imposing the recommendations of Presidential Emergency Board 219 on the parties for the last major national rail dispute a few years ago. However, the situation we confront today is different. The recommendations of the board have yet to be issued. Congress is facing adjournment which would potentially leave a work stoppage unaddressed for as long as 3 months; 3 months that are among the most critical of the year for moving grain.

I have already been approached about the uncertainty in the marketplace regarding a grain elevator buying, selling and shipping of grain after November 11. Unless Congress extends the cooling-off period, elevators will bid less for grain depressing incomes for hundreds of thousands of farmers who depend on the harvest for their livelihood. Enactment of this resolution could help prevent that by increasing certainty for elevators at least during the time when Congress would be out of session.

Mr. President, an identical resolution, House Resolution 417, was introduced yesterday in the House by Representatives DINGELL, SWIFT, and others. Both the railroads and the unions have signed off on the resolution.

I urge my colleagues to support prompt action on this important issue.

I want to thank my colleague from Illinois, Senator SIMON, who has joined me in this effort. We believe it is important for the economies of our part of the country and we think this is a reasonable solution.

As I said earlier, we have talked to both sides in this dispute and both have agreed that this is an appropriate remedy.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized.

Mr. SIMON. Mr. President, I want to commend our colleague from North Dakota, Senator CONRAD, for his leadership on this.

This really is important. We treat transportation matters in labor-management differently than any other type of labor-management relationship because it is so vital. It is the grain in North Dakota and Illinois. It is commuters in the greater Chicago area. And because of high capital costs today, automobile plants and other plants have a very low inventory. They depend on that transportation coming through. It is vital that we move ahead.

Five years ago or so I ended up mediating a strike between the United Transportation Union and the Chicago and Northwestern Railroad and became much more familiar with this area of the law than I ever intended to become. But Senator CONRAD's leadership on this is absolutely needed.

The American railroads support this. The American railroad unions support this. The Sioux Line is owned by Canadian Pacific, and they have no objection to it. It is clearly essential that we move ahead immediately on this. And I cannot think of any reason why anyone would object to moving ahead on this.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The hour of 11:45 a.m. having arrived, by a previous unanimous consent agreement the Senate will now vote on the conference report to accompany H.R. 4556. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 89, nays 11, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—89

Akaka	Durenberger	Mathews
Baucus	Exon	McConnell
Bennett	Feingold	Metzenbaum
Biden	Feinstein	Mikulski
Bingaman	Ford	Mitchell
Bond	Glenn	Moseley-Braun
Boren	Gorton	Moynihan
Boxer	Grassley	Murkowski
Bradley	Harkin	Murray
Breaux	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pell
Burns	Hollings	Pressler
Byrd	Hutchison	Pryor
Campbell	Inouye	Reid
Chafee	Jeffords	Riegle
Coats	Johnston	Robb
Cochran	Kassebaum	Rockefeller
Cohen	Kempthorne	Sarbanes
Conrad	Kennedy	Sasser
Coverdell	Kerrey	Shelby
Craig	Kerry	Simon
D'Amato	Kohl	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stevens
DeConcini	Levin	Thurmond
Dodd	Lieberman	Warner
Dole	Lott	Wellstone
Domenici	Lugar	Wofford
Dorgan	Mack	

NAYS—11

Brown	Gregg	Roth
Faircloth	Helms	Smith
Graham	McCain	Wallop
Gramm	Nickles	

So, the conference report was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. FORD). The majority leader.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate H.R. 4649, the conference report accompanying the District of Columbia appropriations bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the bill (H.R. 4649) entitled "An act making appropriations for the Government of the District of Columbia and other activities chargeable in whole or part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes and concur therein with an amendment.

The Senate resumed consideration of the amendments in disagreement to the conference report.

Pending:

(1) Gramm Amendment No. 2585 (to House amendment to Senate amendment number 3), to strengthen the Violent Crime Control and Law Enforcement Act of 1994 by reducing the number of social programs and increasing the penalties for criminal activity.

(2) Cohen/Sasser Amendment No. 2594 (to House amendment to Senate amendment number 6), to provide for enhanced penalties for health care fraud.

(3) Wofford Amendment No. 2595 (to Cohen Amendment No. 2594), to disqualify Members of Congress from participating in the Federal Employee Health Benefits Program under chapter 89 of title 5, United States Code.

(4) Domenici Amendment No. 2596 (to House amendment to Senate amendment number 12), to improve the operations of the legislative branch of the Federal Government.

(5) Boren Amendment No. 2597 (to Domenici Amendment No. 2596), to improve the operations of the legislative branch of the Federal Government.

AMENDMENT NO. 2595 TO AMENDMENT NO. 2594

The PRESIDING OFFICER. The question before the Senate is an amendment in the second degree, Amendment No. 2595 offered by the Senator from Pennsylvania [Mr. WOFFORD].

The Senator from West Virginia.

Mr. BYRD. Mr. President, has the time under the Pastore rule expired for the day?

The PRESIDING OFFICER. No, it has not.

Mr. BYRD. It has not?

The PRESIDING OFFICER. It has not.

Mr. BYRD. I ask unanimous consent that I may speak out of order for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator may proceed. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair. I will not detain the Senate more than 5 minutes.

THOUGHTS ON HAITI

Mr. BYRD. Mr. President, many discussions concerning the scope and duration of our military operation in Haiti have been conducted in recent days, both on this floor and in other meetings. I am taking this opportunity to outline my views on the language that I believe should be adopted regarding Haiti.

I believe that we should act to set reasonable limits on the mission and duration of the United States operation in Haiti. I would propose defining and limiting the United States mission in Haiti to, first, protecting United States citizens and interests in Haiti, and protecting the safety of the multinational force now deployed in Haiti. The second element of the mission should be to stabilize the security situation in Haiti so that the restored democratically elected Government can quickly reassume the functions of government. This effort includes protecting the key individuals in this transition, such as in the United States role yesterday in protecting the Haitian Legislature so that it can meet and operate. It also includes providing technical assistance to the Haitian Government in order to begin the process of retraining the military and police, and enhancing their noncombat capabilities, to operate in support of the best interests of the people and the democratic constitution of Haiti. The third element of the mission in Haiti would be to facilitate the provision of humanitarian assistance to the people of Haiti. Finally, the fourth mission of the United States operation in Haiti should be to ensure the safe and orderly transition to the U.N. mission in Haiti, which is to replace the current United States-led operation, called for in the U.N. Security Council resolution.

We have all been mindful of the problems associated with vaguely defined missions, which seem to lead, as in the case of Somalia, to mission "creep," so-called, and operations of open-ended duration. I would propose to fund this operation through February 15, 1995, with two possible extensions. I would include a 1-month extension, to March 15, 1995, at the discretion and recommendation of the President, in order to ensure the orderly transition to the U.N. mission in Haiti and to provide for the safe and orderly withdrawal of United States forces, except those Americans included in the U.N. mission. Beyond March 15, I would propose a possible additional extension of the United States operation, if the President requests such an extension, and also the funding, and if the Congress approves the extension and the funding therefore. This request should be addressed under fast track rules, that would allow the Congress to offer germane amendments, but that would also ensure a congressional vote, within a very constricted timeframe, in relation to the President's recommendation.

As a final element, I believe that the President should report to the Congress on a monthly basis on the progress being made toward transitioning from a U.S.-led operation to a U.N.-led operation. These progress reports will help the Congress to evaluate any request for an extension of the United States operation. They also would serve to keep pressure on the United Nations to get its act together in organizing an effective follow-on force to the current U.S.-led operation.

Mr. President, I will have more to say on this subject matter, but I did think it only fair to my colleagues that they know that I do have a proposal that I may wish to advance. I may not have the votes for it, because the administration and others have been very busy in urging that there be no cutoff date. And I have not attempted to corral any votes or buttonhole any Senators. I think I have spoken to two different Senators about it, just by way of asking their opinions.

But, Mr. President, I do feel that my colleagues should know the bare outlines of the proposal that I am advancing. They can make their judgments about it when we get to a fuller discussion of the subject matter.

I thank the Chair and I thank all Senators.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

The Senate continued with the consideration of the amendments in disagreement to the conference report.

AMENDMENT NO. 2595

Mr. COHEN. Mr. President, I believe the regular order has been called.

The PRESIDING OFFICER. The question before the Senate is on the amendment in the second degree, amendment No. 2595, offered by the Senator from Pennsylvania [Mr. WOFFORD].

AMENDMENT NO. 2594, AS MODIFIED

Mr. COHEN. Mr. President, I modify my amendment to accept the pending

second-degree amendment, as well as to make the following changes that I now send to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment is so modified.

The amendment (No. 2594), as modified, reads as follows:

At the appropriate place, insert the following new subtitle:

Subtitle ___—Enhanced Penalties for Health Care Fraud

PART 1—ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM

SEC. ___01. ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—Not later than January 1, 1995, the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary"), acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to the delivery of and payment for health care in the United States,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B of the Social Security Act and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section ___03.

(2) COORDINATION WITH HEALTH PLANS.—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) REGULATIONS.—

(A) IN GENERAL.—The Secretary and the Attorney General shall by regulation establish standards to carry out the program under paragraph (1).

(B) INFORMATION STANDARDS.—

(i) IN GENERAL.—Such standards shall include standards relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) CONFIDENTIALITY.—Such standards shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.—The provisions of section 1157(a) of the Social Security Act (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section, in the same manner as such section applies to information provided to organizations with a contract under subtitle B of title V of this Act, with respect to the performance of such a contract.

(C) DISCLOSURE OF OWNERSHIP INFORMATION.—

(i) IN GENERAL.—Such standards shall include standards relating to the disclosure of ownership information described in clause (ii) by any entity providing health care services and items.

(ii) OWNERSHIP INFORMATION DESCRIBED.—The ownership information described in this clause includes—

(I) a description of such items and services provided by such entity;

(II) the names and unique physician identification numbers of all physicians with a financial relationship (as defined in section 1877(a)(2) of the Social Security Act) with such entity;

(III) the names of all other individuals with such an ownership or investment interest in such entity; and

(IV) any other ownership and related information required to be disclosed by such entity under section 1124 or section 1124A of the Social Security Act, except that the Secretary shall establish procedures under which the information required to be submitted under this subclause will be reduced with respect to health care provider entities that the Secretary determines will be unduly burdened if such entities are required to comply fully with this subclause.

(4) AUTHORIZATION OF APPROPRIATIONS FOR INVESTIGATORS AND OTHER PERSONNEL.—In addition to any other amounts authorized to be appropriated to the Secretary and the Attorney General for health care anti-fraud and abuse activities for a fiscal year, there are authorized to be appropriated additional amounts as may be necessary to enable the Secretary and the Attorney General to conduct investigations and audits of allegations of health care fraud and abuse and otherwise carry out the program established under paragraph (1) in a fiscal year.

(5) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise the authority described in paragraphs (4) and (5) of section 6 of the Inspector General Act of 1978 (relating to subpoenas and administration of oaths) with respect to the activities under the all-payer fraud and abuse control program established under this subsection to the same extent as such Inspector General may exercise such authorities to perform the functions assigned by such Act.

(6) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978.

(7) HEALTH PLAN DEFINED.—For the purposes of this subsection, the term "health plan" shall have the meaning given such term in section 1128(i) of the Social Security Act.

(b) HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is hereby established an account to be known as the "Health Care Fraud and Abuse Control Account" (in this section referred to as the "Anti-Fraud Account"). The Anti-Fraud Account shall consist of—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Anti-Fraud Account as provided in subsection (a)(4), sections ___41(b) and ___42(b), and title XI of the Social Security Act except for those penalties attributable to laws in existence prior to the enactment of this Act; and

(iii) such amounts as are transferred to the Anti-Fraud Account under subparagraph (C).

(B) AUTHORIZATION TO ACCEPT GIFTS.—The Anti-Fraud Account is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Anti-Fraud Account, for the benefit of the Anti-Fraud Account or any activity financed through the Anti-Fraud Account.

(C) TRANSFER OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall transfer to the Anti-Fraud Account an amount equal to the sum of the following:

(I) Criminal fines imposed in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

(ii) Administrative penalties and assessments imposed under titles XI, XVIII, and XIX of the Social Security Act (except as otherwise provided by law) except for those penalties attributable to laws in existence prior to the enactment of this Act.

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

(iv) Penalties and damages imposed under the False Claims Act (31 U.S.C. 3729 et seq.), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator or for restitution) except for those penalties attributable to laws in existence prior to the enactment of this Act.

(2) USE OF FUNDS.—

(A) IN GENERAL.—Amounts in the Anti-Fraud Account shall be available without appropriation and until expended as determined jointly by the Secretary and the Attorney General of the United States in carrying out the health care fraud and abuse control program established under subsection (a) (including the administration of the program), and may be used to cover costs incurred in operating the program, including costs (including equipment, salaries and benefits, and travel and training) of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);

(ii) investigations;

(iii) financial and performance audits of health care programs and operations;

(iv) inspections and other evaluations; and

(v) provider and consumer education regarding compliance with the provisions of this subtitle.

(B) FUNDS USED TO SUPPLEMENT AGENCY APPROPRIATIONS.—It is intended that disbursements made from the Anti-Fraud Account to any Federal agency be used to increase and not supplant the recipient agency's appropriated operating budget.

(3) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Anti-Fraud Account in each fiscal year.

(4) USE OF FUNDS BY INSPECTOR GENERAL.—

(A) REIMBURSEMENTS FOR INVESTIGATIONS.—The Inspector General is authorized to receive and retain for current use reimbursement for the costs of conducting investigations, when such restitution is ordered by a court, voluntarily agreed to by the payer, or otherwise.

(B) CREDITING.—Funds received by the Inspector General as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of their deposit.

SEC. ___02. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO ALL FRAUD AND ABUSE AGAINST ANY HEALTH PLAN.

(a) CRIMES.—

(1) SOCIAL SECURITY ACT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended as follows:

(A) In the heading, by adding at the end the following: "OR HEALTH PLANS".

(B) In subsection (a)(1)—

(i) by striking "title XVIII or" and inserting "title XVIII,", and

(ii) by adding at the end the following: "or a health plan (as defined in section 1128(i)),".

(C) In subsection (a)(5), by striking "title XVIII or a State health care program" and inserting "title XVIII, a State health care program, or a health plan".

(D) In the second sentence of subsection (a)—

(i) by inserting after "title XIX" the following: "or a health plan", and

(ii) by inserting after "the State" the following: "or the plan".

(E) In subsection (b)(1), by striking "title XVIII or a State health care program" each place it appears and inserting "title XVIII, a State health care program, or a health plan".

(F) In subsection (b)(2), by striking "title XVIII or a State health care program" each place it appears and inserting "title XVIII, a State health care program, or a health plan".

(G) In subsection (b)(3), by striking "title XVIII or a State health care program" each place it appears in subparagraphs (A) and (C) and inserting "title XVIII, a State health care program, or a health plan".

(H) In subsection (d)(2)—

(i) by striking "title XIX," and inserting "title XIX or under a health plan,", and

(ii) by striking "State plan," and inserting "State plan or the health plan,".

(2) IDENTIFICATION OF COMMUNITY SERVICE OPPORTUNITIES.—Section 1128B of such Act (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

"(f) The Secretary may—

"(1) in consultation with State and local health care officials, identify opportunities for the satisfaction of community service obligations that a court may impose upon the conviction of an offense under this section, and

"(2) make information concerning such opportunities available to Federal and State law enforcement officers and State and local health care officials.".

(b) HEALTH PLAN DEFINED.—Section 1128 of the Social Security Act (42 U.S.C. 1320a–7) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) HEALTH PLAN DEFINED.—For purposes of sections 1128A and 1128B, the term 'health plan' means a public or private program for the delivery of or payment for health care items or services."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

SEC. ___03. HEALTH CARE FRAUD AND ABUSE GUIDANCE.

(a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

(1) IN GENERAL.—

(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1995, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act the (42 U.S.C. 1320a–7b(b)) and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act (42 U.S.C. 1320a–7(b)(7));

(iii) interpretive rulings to be issued pursuant to subsection (b); and

(iv) special fraud alerts to be issued pursuant to subsection (c).

(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL STATE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) REPORT.—The Inspector General of the Department of Health and Human Services (hereafter in this section referred to as the "Inspector General") shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Government health care programs.

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Government health care programs.

(b) INTERPRETIVE RULINGS.—

(1) IN GENERAL.—

(A) REQUEST FOR INTERPRETIVE RULING.—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General's current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B of the Social Security Act (hereafter in this section referred to as an "interpretive ruling").

(B) ISSUANCE AND EFFECT OF INTERPRETIVE RULING.—

(i) IN GENERAL.—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling in response to a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this provision shall be published in the Federal Register or otherwise made available for public inspection.

(ii) REASONS FOR DENIAL.—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision and shall identify the reasons for such decision.

(2) CRITERIA FOR INTERPRETIVE RULINGS.—

(A) IN GENERAL.—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling not authorized under this subsection.

(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on any factual issue, including the intent of the parties or the fair market value of particular leased space or equipment.

(c) SPECIAL FRAUD ALERTS.—

(1) IN GENERAL.—

(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) (hereafter in this subsection referred to as a "special fraud alert").

(B) ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall in consultation with the Attorney General, issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

SEC. ___04. REPORTING OF FRAUDULENT ACTIONS UNDER MEDICARE.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish a program through which individuals entitled to benefits under the medicare program may report to the Secretary on a confidential basis (at the individual's request) instances of suspected fraudulent actions arising under the program by providers of items and services under the program.

PART 2—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

SEC. ___11. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO FRAUD.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

"(3) FELONY CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Health Reform Act, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.".

(2) CONFORMING AMENDMENT.—Section 1128(b)(1) of such Act (42 U.S.C. 1320a–7(b)(1)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of the enactment of the Health Reform Act, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.".

(2) CONFORMING AMENDMENT.—Section 1128(b)(3) of such Act (42 U.S.C. 1320a–7(b)(3)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

SEC. ___12. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) of the Social Security Act (42 U.S.C. 1320a–7(c)(3)) is amended by adding at the end the following new subparagraphs:

"(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

"(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

"(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.".

SEC. ___13. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7(b)) is amended by adding at the end the following new paragraph:

"(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity—

"(A) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

"(B) against which a civil monetary penalty has been assessed under section 1128A; or

"(C) that has been excluded from participation under a program under title XVIII or under a State health care program.".

SEC. ___14. ACTIONS SUBJECT TO CRIMINAL PENALTIES.

(a) RESTRICTION ON APPLICATION OF EXCEPTION FOR AMOUNTS PAID TO EMPLOYEES.—Section 1128B(b)(3)(B) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(B)) is amended by striking "services;" and inserting the following: "services, but only if the amount of remuneration under the arrangement is (i) consistent with fair market value; (ii) not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals of patients directly contacted by the employee to the employer for the furnishing (or arranging for the furnishing) of such items or services; and (iii) provided pursuant to an arrangement that would be commercially reasonable even if no such referrals were made;".

(b) NEW EXCEPTION FOR CAPITATED PAYMENTS.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(F) any reduction in cost sharing or increased benefits given to an individual, any amounts paid to a provider for an item or service furnished to an individual, or any discount or reduction in price given by the provider for such an item or service, if the individual is enrolled with and such item or service is covered under any of the following:

"(i) A health plan which is furnishing items or services under a risk-sharing contract under section 1876 or section 1903(m).

"(ii) A health plan receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972;

"(G) any amounts paid to a provider for an item or service furnished to an individual or any discount or reduction in price given by the provider for such an item or service, if the individual is enrolled with and such item or service is covered under a health plan under which the provider furnishing the item or service is paid by the health plan for furnishing the item or service only on a capitated basis pursuant to a written arrangement between the plan and the provider in which the provider assumes financial risk for furnishing the item or service;

"(H) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all third party payors to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary; and

"(I) remuneration given to individuals to promote the delivery of preventive care in compliance with regulations promulgated by the Secretary.".

SEC. ___15. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c–5(b)(1)) is amended by striking "may prescribe)" and inserting "may prescribe, except that such period may not be less than 1 year)".

(2) CONFORMING AMENDMENT.—Section 1156(b)(2) of such Act (42 U.S.C. 1320c–5(b)(2)) is amended by striking "shall remain" and inserting "shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain".

(b) REPEAL OF "UNWILLING OR UNABLE" CONDITION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c–5(b)(1)) is amended—

(1) in the second sentence, by striking "and determines" and all that follows through "such obligations,"; and

(2) by striking the third sentence.

SEC. ___16. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) of the Social Security Act (42 U.S.C. 1395mm(i)(1)) is amended by striking "the Secretary may terminate" and all that follows and inserting the following: "in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

"(A) has failed substantially to carry out the contract;

"(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section; or

"(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).".

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) of such Act (42 U.S.C.

1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

"(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

"(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

"(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

"(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.".

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

"(A) the Secretary provides the organization with the opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1);

"(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention;

"(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

"(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.".

(4) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) of such Act (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—

(1) REQUIREMENT FOR WRITTEN AGREEMENT.—Section 1876(i)(7)(A) of the Social Security Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking "an agreement" and inserting "a written agreement".

(2) DEVELOPMENT OF MODEL AGREEMENT.—Not later than July 1, 1995, the Secretary shall develop a model of the agreement that an eligible organization with a risk-sharing contract under section 1876 of the Social Security Act must enter into with an entity providing peer review services with respect to services provided by the organization under section 1876(i)(7)(A) of such Act.

(3) REPORT BY GAO.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study of the costs incurred by eligible organizations with risk-sharing contracts under section 1876(b) of such Act of complying with the requirement of entering into a written agreement with an entity providing peer review services with respect to services provided by the organization, together with an analysis of how information generated by such entities is used by the Secretary to assess the quality of services provided by such eligible organizations.

(B) REPORT TO CONGRESS.—Not later than July 1, 1997, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1995.

SEC. ___17. EFFECTIVE DATE.

The amendments made by this part shall take effect January 1, 1995.

PART 3—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. ___21. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) GENERAL PURPOSE.—Not later than January 1, 1995, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

(b) REPORTING OF INFORMATION.—

(1) IN GENERAL.—Each government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

(A) The name of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) TIMING AND FORM OF REPORTING.—The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information in this database. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including the agency designated by the Secretary in subsection (b)(5) shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) The term "final adverse action" includes:

(A) Civil judgments against a health care provider in Federal or State court related to the delivery of a health care item or service.

(B) Federal or State criminal convictions related to the delivery of a health care item or service.

(C) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(i) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(ii) any other loss of license of the provider, supplier, or practitioner, by operation of law, or

(iii) any other negative action or finding by such Federal or State agency that is publicly available information.

(D) Exclusion from participation in Federal or State health care programs.

(E) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(2) The terms "licensed health care practitioner", "licensed practitioner", and "practitioner" mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) The term "health care provider" means a provider of services as defined in section 1861(u) of the Social Security Act, and any entity, including a health maintenance organization, group medical practice, or any

other entity listed by the Secretary in regulation, that provides health care services.

(4) The term "supplier" means a supplier of health care items and services described in section 1819(a) and (b), and section 1861 of the Social Security Act.

(5) The term "Government agency" shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Veterans' Administration.

(D) State law enforcement agencies.

(E) State medicaid fraud and abuse units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(6) The term "health plan" has the meaning given to such term by section 1128(i) of the Social Security Act.

(7) For purposes of paragraph (2), the existence of a conviction shall be determined under paragraph (4) of section 1128(j) of the Social Security Act.

(g) CONFORMING AMENDMENT.—Section 1921(d) of the Social Security Act is amended by inserting "and section ___21 of subtitle ___ of the appropriations, 1995" after "section 422 of the Health Care Quality Improvement Act of 1986".

PART 4—CIVIL MONETARY PENALTIES

SEC. ___31. CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended as follows:

(1) In subsection (a)(1), by inserting "or of any health plan (as defined in section 1128(i))," after "subsection (i)(1)),".

(2) In subsection (b)(1)(A), by inserting "or under a health plan" after "title XIX".

(3) In subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraphs:

"(3) With respect to amounts recovered arising out of a claim under a health plan, the portion of such amounts as is determined to have been paid by the plan shall be repaid to the plan, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by subtitle ___ of the appropriations, 1995 (as estimated by the Secretary) shall be deposited into the Health Care Fraud and Abuse Control Account established under section ___01(b) of such Act.".

(4) In subsection (i)—

(A) in paragraph (2), by inserting "or under a health plan" before the period at the end, and

(B) in paragraph (5), by inserting "or under a health plan" after "or XX".

(b) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking "or" at the end of paragraph (1)(D);

(B) by striking ", or" at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (3) and inserting "; or"; and

(D) by inserting after paragraph (3) the following new paragraph:

"(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128(h)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under title XVIII, or a State health care program;".

(2) REMUNERATION DEFINED.—Section 1128A(i) of such Act (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

"(6) The term 'remuneration' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term 'remuneration' does not include—

"(A) the waiver of coinsurance and deductible amounts by a person, if—

"(i) the waiver is not offered as part of any advertisement or solicitation;

"(ii) the person does not routinely waive coinsurance or deductible amounts; and

"(iii) the person—

"(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;

"(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or

"(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;

"(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all third party payors to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary; or

"(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations.".

(c) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)), as amended by subsection (b), is further amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the semicolon at the end of paragraph (4) and inserting "; or"; and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity that is participating in a program under title XVIII or a State health care program;".

(d) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)), as amended by subsections (b) and (c), is amended in the matter following paragraph (6)—

(1) by striking "$2,000" and inserting "$10,000";

(2) by inserting "; in cases under paragraph (4), $10,000 for each such offer or transfer; in cases under paragraph (5), $10,000 for each day the prohibited relationship occurs; in cases under paragraph (6) or (7), $10,000 per violation" after "false or misleading information was given";

(3) by striking "twice the amount" and inserting "3 times the amount"; and

(4) by inserting "(or, in cases under paragraph (4), 3 times the amount of the illegal remuneration)" after "for each such item or service".

(e) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (A) by striking "claimed," and inserting the following: "claimed, including any person who repeatedly presents or causes to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,";

(2) in subparagraph (C), by striking "or" at the end;

(3) in subparagraph (D), by striking "; or" and inserting ", or"; and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) is for a medical or other item or service that a person repeatedly knows or should know is not medically necessary; or".

(f) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended by adding the following new paragraph:

"(3) Any person (including any organization, agency, or other entity, but excluding a beneficiary as defined in subsection (i)(5)) who the Secretary determines has violated section 1128B(b) of this title shall be subject to a civil monetary penalty of not more than $10,000 for each such violation. In addition, such person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b). The total amount of remuneration subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one proscribed by section 1128B(b).".

(g) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.—Section 1156(b)(3) of the Social Security Act (42 U.S.C. 1320c–5(b)(3)) is amended by striking "the actual or estimated cost" and inserting the following: "up to $10,000 for each instance".

(h) PROCEDURAL PROVISIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is further amended by adding at the end the following new subparagraph:

"(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) or (B) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1995.

PART 5—AMENDMENTS TO CRIMINAL LAW

SEC. ___41. HEALTH CARE FRAUD.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1347. Health care fraud

"(a) Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person shall be imprisoned for any term of years.

"(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 1128(i) of the Social Security Act.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1347. Health care fraud.".

(b) CRIMINAL FINES DEPOSITED IN THE HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section ___01(b) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).

SEC. ___42. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that—

"(i) is used in the commission of the offense if the offense results in a financial loss or gain of $50,000 or more; or

"(ii) constitutes or is derived from proceeds traceable to the commission of the offense.

"(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

"(i) section 1347 of this title;

"(ii) section 1128B of the Social Security Act;

"(iii) sections 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title if the violation or conspiracy relates to health care fraud; and

"(iv) section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to health care fraud.".

(b) PROPERTY FORFEITED DEPOSITED IN HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section ___01(b) an amount equal to amounts resulting from forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

SEC. ___43. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by inserting "or" at the end of subparagraph (B); and

(3) by adding at the end the following:

"(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);".

PART 6—PAYMENTS FOR STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. ___51. ESTABLISHMENT OF STATE FRAUD UNITS.

(a) ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL UNIT.—The Governor of each State shall, consistent with State law, establish and maintain in accordance with subsection (b) a State agency to act as a Health Care Fraud and Abuse Control Unit for purposes of this part.

(b) DEFINITION.—In this section, a "State Fraud Unit" means a Health Care Fraud and Abuse Control Unit designated under subsection (a) that the Secretary certifies meets the requirements of this part.

SEC. ___52. REQUIREMENTS FOR STATE FRAUD UNITS.

(a) IN GENERAL.—The State Fraud Unit must—

(1) be a single identifiable entity of the State government;

(2) be separate and distinct from any State agency with principal responsibility for the administration of any Federally-funded or mandated health care program;

(3) meet the other requirements of this section.

(b) SPECIFIC REQUIREMENTS DESCRIBED.—The State Fraud Unit shall—

(1) be a Unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

(2) if it is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, (A) assure its referral of suspected criminal violations to the appropriate authority or authorities in the State for prosecution, and (B) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

(3) have a formal working relationship with the office of the State Attorney General or the appropriate authority or authorities for prosecution and have formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the Fraud Unit and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to any Federally-funded or mandated health care programs.

(c) STAFFING REQUIREMENTS.—The State Fraud Unit shall—

(1) employ attorneys, auditors, investigators and other necessary personnel; and

(2) be organized in such a manner and provide sufficient resources as is necessary to promote the effective and efficient conduct of State Fraud Unit activities.

(d) COOPERATIVE AGREEMENTS; MEMORANDA OF UNDERSTANDING.—The State Fraud Unit shall have cooperative agreements with—

(1) Federally-funded or mandated health care programs;

(2) similar Fraud Units in other States, as exemplified through membership and participation in the National Association of Medicaid Fraud Control Units or its successor; and

(3) the Secretary.

(e) REPORTS.—The State Fraud Unit shall submit to the Secretary an application and an annual report containing such information as the Secretary determines to be necessary to determine whether the State Fraud Unit meets the requirements of this section.

(f) FUNDING SOURCE; PARTICIPATION IN ALL-PAYER PROGRAM.—In addition to those sums expended by a State under section ___54(a) for purposes of determining the amount of the Secretary's payments, a State Fraud Unit may receive funding for its activities from other sources, the identity of which shall be reported to the Secretary in its application or annual report. The State Fraud Unit shall participate in the all-payer fraud and abuse control program established under section ___01.

SEC. ___53. SCOPE AND PURPOSE.

The State Fraud Unit shall carry out the following activities:

(1) The State Fraud Unit shall conduct a statewide program for the investigation and prosecution (or referring for prosecution) of violations of all applicable state laws regarding any and all aspects of fraud in connection with any aspect of the administration and provision of health care services and activities of providers of such services under any Federally-funded or mandated health care programs;

(2) The State Fraud Unit shall have procedures for reviewing complaints of the abuse or neglect of patients of facilities (including patients in residential facilities and home health care programs) that receive payments under any Federally-funded or mandated health care programs, and, where appropriate, to investigate and prosecute such complaints under the criminal laws of the State or for referring the complaints to other State agencies for action.

(3) The State Fraud Unit shall provide for the collection, or referral for collection to the appropriate agency, of overpayments that are made under any Federally-funded or mandated health care program and that are discovered by the State Fraud Unit in carrying out its activities.

SEC. ___54. PAYMENTS TO STATES.

(a) MATCHING PAYMENTS TO STATES.—Subject to subsection (c), for each year for which a State has a State Fraud Unit approved under section ___52(b) in operation the Secretary shall provide for a payment to the State for each quarter in a fiscal year in an amount equal to the applicable percentage of the sums expended during the quarter by the State Fraud Unit.

(b) APPLICABLE PERCENTAGE DEFINED.—

(1) IN GENERAL.—In subsection (a), the "applicable percentage" with respect to a State for a fiscal year is—

(A) 90 percent, for quarters occurring during the first 3 years for which the State Fraud Unit is in operation; or

(B) 75 percent, for any other quarters.

(2) TREATMENT OF STATES WITH MEDICAID FRAUD CONTROL UNITS.—In the case of a State with a State medicaid fraud control in operation prior to or as of the date of the enactment of this Act, in determining the number of years for which the State Fraud Unit under this part has been in operation, there shall be included the number of years for which such State medicaid fraud control unit was in operation.

(c) LIMIT ON PAYMENT.—Notwithstanding subsection (a), the total amount of payments made to a State under this section for a fiscal year may not exceed the amounts as authorized pursuant to section 1903(b)(3) of the Social Security Act.

SEC. . DISQUALIFICATION OF MEMBERS OF CONGRESS FROM PARTICIPATING IN THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.

(a) FINDINGS.—The Congress finds that—

(1) the Congress has failed to enact legislation that extends health insurance to all Americans and reduces inflation in health care costs;

(2) Members of Congress may obtain health insurance through the Federal Employees Health Benefits Program, which provides Members of Congress with guaranteed and affordable private health insurance, choice of health plans and choice of doctor, and no exclusions for preexisting medical conditions; and

(3) Members of Congress currently receive on average a 72 percent contribution of their health insurance premiums from their employer, the taxpayers.

(b) PURPOSE.—The purpose of this section is to provide that Members of Congress shall not obtain taxpayer-financed health insurance under the favorable conditions established through the Federal Employees Health Benefits Program unless Congress enacts health reform legislation that gives the American people the type of affordable, guaranteed health insurance that Members of Congress have provided for themselves.

(c) LIMITATION ON FEDERAL EMPLOYEE HEALTH BENEFITS PLAN COVERAGE FOR MEMBERS OF CONGRESS.—Effective on January 1, 1995.—

(1) the Office of Personnel Management shall—

(A) terminate the enrollment of any Member of Congress in a health benefits plan under chapter 89 of title 5, United States Code; and

(B) prohibit the original enrollment, re-enrollment, or change of enrollment of any Member of Congress in such a plan; and

(2) the Secretary of the Senate and the Clerk of the House of Representatives shall cease making applicable employee withholdings and Government contributions under section 8906 of title 5, United States Code, for any Member of Congress.

(d) CONTINUED COVERAGE.—A Member of Congress who is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, on December 31, 1994, may receive continued coverage under section 8905a of such title.

AMENDMENT NO. 2599 TO AMENDMENT NO. 2594

Mr. DOMENICI. Mr. President, on behalf of Senator DOLE, I send to the desk an amendment to the amendment that is pending.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for Mr. DOLE, for himself, and Mr. DOMENICI, proposes an amendment numbered 2599 to amendment No. 2594, as modified.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is located in today's RECORD under "Amendments Submitted.")

Mr. COHEN. Mr. President, let me just take a moment to explain the effect of the change that has been sent to the desk. The effect of the change is to the working account language in my amendment to fend off a point of order on budget grounds. So any challenge that may lie to the amendment by virtue of its violating the budget has been corrected by this modification.

So the debate that took place yesterday, which I think was fully debated, is the issue of health care fraud, in which there is no disagreement on the part of anyone here that I am aware of, no disagreement from the President of the United States, none from the majority leader or minority leader in terms of the contents of the amendment. I believe it enjoys overwhelming bipartisan support.

At the proper time, I am going to urge my colleagues to vote in favor of it.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mrs. BOXER). The Senator from New Mexico.

AMENDMENT NO. 2597 TO AMENDMENT NO. 2596

Mr. DOMENICI. Madam President, I understand that it would be acceptable to Senator COHEN from Maine if we ask consent that his amendment be temporarily set aside so we may proceed with the Boren-Domenici amendments regarding congressional reform.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I seek that request at this point, Madam President.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Madam President, I am proud to join with the Senator from New Mexico in offering this amendment that is now pending. As my colleagues know, over 2 years ago, both Houses of the Congress acted to pass legislation that established the Joint Committee on the reform of this institution. It was a very unusual joint committee that had an equal number of Members of the House and Senate, an equal number of Members from each party. There were six Democratic Senators, six Republican Senators, and a like number from the House of Representatives, plus the Democratic and Republican leadership of the two Houses.

That committee was asked to do its work expeditiously with the minimum of staff and the minimum amount of expenditures. It worked hard. The committee's work was completed on time within 1 year and, unlike most temporary committees around here, the committee then automatically went out of existence and all expenditures by the committee were stopped. We are exceedingly proud of that record.

The committee brought to us, to the membership of both Houses, a set of strong, constructive reform recommendations which would strengthen this institution. Those recommendations were then taken to the Rules Committee on this side of the Capitol. This Rules Committee made some modifications and reported them to us for our consideration.

Because of procedural problems on the Senate floor, we have been unable to bring those recommendations, those important recommendations of the bipartisan committee on the reform of Congress to this body for consideration. Out of frustration, the Senator from New Mexico, who was the vice chair on the Senate side of this committee, and I decided we should not allow this Congress to adjourn without giving the Members of the Senate an opportunity to vote on these reform recommendations. That is why we have taken the only option available to us and have presented those recommendations in the form of an amendment on the pending legislation.

It is perhaps ironic, and indeed symbolic, that in order to have the reform package—a product of long, bipartisan deliberation, much work, and much study—brought to the Congress of the United States for consideration, that it had to be added as an amendment to an amendment of disagreement to a conference report pending on a totally different subject. The fact that we have had to use this parliamentary device to bring before the Congress a recommendation on reforms that would make this body more efficient, more accountable to the American people, more able to make sound policy decisions, is indicative of the problem we now face.

I do not need to tell my colleagues, I do not need to tell the current occupant of the chair, that this institution is in grave trouble. Public confidence in this institution has sunk to an all-time low. According to some polling data, only 14 percent of the American people now have confidence in the Congress of the United States or approve of the way we are conducting our business —a historic, all-time low approval rating and confidence rating for the Congress of the United States.

According to a study done by the Kettering Foundation, 79 percent of the American people no longer feel that Congress represents or cares about people like them. They look at our process and they cannot understand what is going on. They see that action on important policy decisions simply does not occur and yet the situation is so confusing they do not know which Members of Congress to hold accountable. It is as if we are speaking a foreign language here when the parliamentary tangles in which we find ourselves are viewed by the public, and more and more they have come to view the Members of the House and Senate as Members of a privileged class of people, not living under the laws which we pass as other Americans have to live under those laws, not focusing our attention on the important matters that

need to be decided for the Nation's future.

Some have said that Congress has always been unpopular to some degree. Certainly that is true. People have viewed the political process, they have thought of their own problems, and they have always expressed some frustration with the inability of Congress to come to grips with serious problems. But I suggest that the current level of disapproval of this body, the current lack of trust of this institution, has sunk to levels that are not normal by any standard of judgment.

Yes, it is true at any given time over the last two centuries of our existence as an independent Republic, 40 or 50 percent of the people have disapproved of this institution. There have been moments in the past when the approval rating of Congress has sunk as low as in the range of 30 to 40 percent approval. But we have never been in a period, as we have been in the last 4 to 5 years, in which approval ratings have hovered in the 20's and now dropped all the way down to 14 percent. It is not normal.

What is happening in this country is the development of an unparalleled level of cynicism on the part of people about their own Government. This institution, which belongs to the people, this institution where the people are to have a voice in important policy decisions, has come to be judged by the people as a place where they have no voice and where they are largely unrepresented. I cannot tell you adequately the depth of the concern that I have for the future of our political system in this country if we do not rebuild that relationship of trust between the American people and our institutions.

I will leave this Chamber for the last time in a few days as I will be leaving my membership in the U.S. Senate to go on to other opportunities for public service as president of the University of Oklahoma. I look back on my last 16 years as a U.S. Senator with great pride and in many ways with great satisfaction. As I walk up the steps to the Senate Chamber these days, I find myself pausing on some of the steps, looking up at the Capitol dome, and reflecting upon my experience here. I think about the greatness of this institution and all that it has contributed to this country in the course of its history.

As I sit here at my desk, I sometimes pull open the drawer and I look at the names of those Senators who have served here before me and who have occupied this desk—as we all have a tradition of carving our own names inside the drawers of the desks on the Senate floor where we sit. I have been privileged to occupy the desk previously occupied by late President Harry Truman. On this floor are the desks that have been used by Clay and Calhoun and Webster, by Presidents of the United States, by people who have made a great contribution to this country.

As you sit here you reflect upon the fact we are now the trustees of this institution. It has been said that the greatest thing that can happen to any human being in his or her life is to be able to be part of something larger than oneself; to serve a cause that is far more important than the personal success of any one of us as individuals; to devote your life to some great cause that matters.

All of us who have been privileged to come here by the votes of the men and women in our own States have, indeed, been given an opportunity to be part of something far greater than ourselves. Members of the Senate come and go, the membership of this body changes, but it remains—regardless of the identities of those who occupy these desks temporarily—an essential part, in fact, at the heart of our political process. It is the building block on which the legitimacy of our political system rests. We all remember the cry at the time of independence, "no taxation without representation," that we Americans wanted to establish a system of government in which we had the ultimate voice.

So, Madam President, when we reach a situation in this country in which the people themselves no longer feel that they are represented or heard by the Congress of the United States, we have cast in doubt the very legitimacy of our entire political process.

There is no greater danger to our democracy than the frustration of the American people and the feeling that they seem to be developing of utter helplessness to affect things in their own country. When the American people say to us, as they are saying in poll after poll after poll: We no longer are going to be involved in politics at the Federal level, either by voting or by campaigning for candidates in whom we believe, or participating in our political parties because we do not think we can make a difference—we have a problem that must not be ignored. We have a political system and a social system in peril.

And so, it is not only with a great sense of pride that I have had the privilege of serving here, not only with a feeling of gratitude to the people of my State who allowed me to come and be part of a cause and part of an institution far more important than my own individual well-being, it is also with an overwhelming sense of foreboding about the future of our political system and the future course of American politics that I will leave this institution in a few days.

Madam President, we are going to change what is happening in American politics. If we are going to change those figures in which it is indicated that four-fifths of the American people no longer believe that this institution belongs to them or they have any ability to impact it or even hold its Members accountable, we must act. There is no one else to do it. Those millions of Americans across this country who have lost their trust in this institution cannot come to this floor and vote. They cannot adopt the reforms that are necessary to make this institution, once again, accountable to them. They cannot come here and vote to change the way we finance campaigns.

Under a system in which people have to raise more and more and more money to have any chance to get elected—millions of dollars, $4 to $5 million on the average to win a U.S. Senate race, and the people look at that and they say, "If I don't have the money to give a thousand dollars for a dinner ticket to help some candidate, or $5,000, or if I don't have the power to hold a fundraiser and raise $1,200, why are any of those people going to listen to me?"

The American people do not have the opportunity to come here and vote for reforms in that system, but we do. We are Members of this institution. They have empowered us with their votes to act as their trustees. We have a chance to vote on it, Madam President. They do not have the power to come here as they look at what has happened to the U.S. Senate and the U.S. Congress, in terms of the inefficient way in which we conduct our business. They do not have the power to come here and change it.

They look at the fact that since the last major reform of this institution when we ended up with 38 committees, an equal number in each House, the same committee definitions in the House and the Senate so that if we had a difference of opinion between the two Houses we could get together and work it out. Thirty-eight committees, 19 in each House so the Members of the Senate and the Members of the House could belong to committees, focus their attention on important problems and get action.

They look at the fact that we have disintegrated and fragmented into a bureaucracy of our own that now strangles us. Three hundred committees and subcommittees, 300 committees and subcommittees in the Congress of the United States, all going off in different directions. No wonder we cannot balance the budget. No wonder we cannot get spending under control. No wonder we cannot make decisions on health care. No wonder we cannot get trade legislation like GATT. No wonder we cannot act on Superfund. Why? Because if you have any essential problem in this body, it ends up not going to one committee in each House, it ends up going to 10 or 15 committees in each House.

I have been on conference committees to work out differences between the House and the Senate on a particular bill in which as many as 13 different committees have been represented

from the two Houses, and you have had over 200 Members of Congress trying to sit down in a room and work out a difference of opinion between the House and the Senate. It is more like the Versailles Treaty negotiations in the Hall of Mirrors at Versailles than it is like an orderly process to conduct business here.

Mr. DOMENICI. Will the Senator yield?

Mr. BOREN. I will be happy to yield.

Mr. DOMENICI. Might I ask, would you have a thought as to how many staffers were in attendance when you talked about 13 committees? Was there a big enough room?

Mr. BOREN. When I talked about 13 committees and I talked about 200 Members of the House and Senate, let me say that we had to move that to an auditorium, and in the chairs around the room were probably 400 or 500 staff members as well. That is something else that has happened.

Since 1946, we have gone from approximately 2,000 staff members working for the Members of the House and Senate to 13,000 to 14,000 working with us directly. If we add in the other support research groups, 38,000 staff. I ask my colleagues to ponder this point—the American people have already pondered it: The level of statesmanship in this institution, the quality of the decisions rendered on important policy decisions, has it improved dramatically because we have gone from 38 committees to 300 committees and subcommittees, because we have gone from 2,000 staff to 38,000 staff? We all know the answer.

The members of the American public, the American citizens, cannot come here and vote to change it. They cannot come here and vote to streamline it. They cannot come here and vote to make our process more accountable. But, Madam President, we can. We have the vote. We have been given the vote. We have been given the responsibility of making a decision on those important matters. Not only do we create an impossible bureaucracy with a myriad of committees, with a staff grown so large now that we can no longer even speak with each other, but we talk to each other through staff members.

Mr. DOMENICI. Will the Senator yield again?

Mr. BOREN. I will be happy to yield.

Mr. DOMENICI. I would like to make another observation. Perhaps you can comment on it, considering what you discussed. It is my understanding the bills clearing both Houses and going to the President are five times longer today than they were 20 years ago.

Mr. BOREN. The Senator is absolutely correct. They have become much longer. We micromanage in detail. We create work for ourselves because we have 100 or 200 unnecessary subcommittees.

For example, let us say you give a Member a subcommittee of their own. They also get two or three additional staff members to staff that subcommittee, which should not even exist in the first place. And then they quickly say, "We must show that there is a reason for our existence," and so the staff begins to develop some legislation. And then you begin to hold hearings on the legislation that was not needed in the first place. And then pretty quickly, you are getting letters from your constituents who are alarmed that this unnecessary subcommittee is holding unnecessary hearings on an unnecessary bill that should not have been introduced in the first place, and you have to hire more staff to answer the letters and the inquiry, and more staff members to dispatch to those unnecessary hearings on the unnecessary bill by the subcommittee that should not exist. By the time you are through, we have so clogged our agenda that there is no time left for us to do anything that is important to the future of this Nation.

Our bipartisan committee held 36 hearings for hundreds of hours, with 240 witnesses coming from both parties, thoughtful Members of Congress, thoughtful former Members of Congress, citizens from the grassroots coming here to testify and to talk to us. And one of the themes that came back again and again is, we do not make the long-range decisions on the important issues affecting America's future: How do we get spending under control? How do we change our tax policy to make us more competitive so we can compete in the marketplace in the world and have jobs for our children and grandchildren? How do we educate the next generation? What do we do about the school dropout rate? What do we do about the rising level of crime in our society because our social fabric is collapsing? These kind of long-range decisions. How do we change our foreign policy to develop a new and coherent architecture for making decisions in the post cold-war world?

Why do we not make these important decisions? Because, Madam President, for one thing, we do not have the time to even think about them because we are running from one unnecessary hearing of one unnecessary subcommittee to another, one committee meeting to another, we do not even have time to think. We have what Senator BYRD has called a fractured attention span. The average Member of the Senate serves on 12 different committees and subcommittees. You need roller blades to get from one place to the next. We are called the greatest deliberative body in the world.

Madam President, you are lucky if you can come from one committee meeting and stay there 10 or 15 minutes because you are already being called to go to the next one, or something else has happened on the Senate floor.

I was once asked to represent my party—there were four of us asked to sit down with four Senators from the other side of the aisle—to talk about the civil rights legislation, a very important bill. I remember the Senator from Missouri [Mr. DANFORTH] was leading the group on the other side of the aisle at that time. Eight Senators. We had passed a bill twice; the President had vetoed a bill twice; and we were going to sit down together, with representation from the White House, and work out a bipartisan solution that would bring progress to the country, that would have the support of the President and actually do something.

Madam President, it took us 3 weeks—3 weeks—to find a 1-hour time slot in which those eight Senators could sit down in the same room together and think about this problem and try to work it out. And do you know what happened? When the 1 hour finally arrived when all eight of us were supposed to be able to be there, never were there more than three of us in that room at the same time. A couple of people were there on time. They stayed about 5 or 10 minutes. They said, "I apologize, I have to rush off" to this hearing or rush off to that meeting. A different group of people, three or four different people, came in the middle of the meeting. They left before it was over. And two other, different Senators showed up at the end.

One hour of time that it took 3 weeks to find and we could not even keep eight people in the room to deliberate about something that important.

No wonder we have a budgetary situation like we have. No wonder we do not have any architecture for educational policy. No wonder our foreign policy is floundering all over the lot without any clear sense of direction. None of us has any clear sense of direction. We do not have time to think. It is outrageous that Members of the Senate would spread themselves to belong to 12 different committees and subcommittees. That is average. There is at least one Member of the Senate who belongs to 23 committees and subcommittees and several Members of the Senate who belong to more than 20 committees and subcommittees. We give waiver after waiver after waiver to Members of the Senate to serve on as many committees as they want.

Why would they do that? Print them all on that letterhead. Senator X belongs to this subcommittee and that subcommittee and this committee and that committee. And we have to have all those committees, also, so that everybody can be chairman or ranking member of something. Everybody has a little empire. At the end of the day we have spread ourselves so thin, we have become so fragmented we have spent our time dealing, as I said, with the unneeded hearing on the unneeded bill put forward by the unneeded subcommittee which, of course, is staffed

by the unneeded staff and we do not have any time left to think about the important problems facing this Nation.

The American people cannot come here and vote to change that, but we can. We can. We have an opportunity to vote. We are going to vote at the end of this debate on this package of reform, which will cut in half virtually the number of unnecessary subcommittees, getting rid of them, cut in half the number of subcommittees, reduce the number of committees on which Members of the Senate can serve, set up a scheduling system that will work so that certain committees meet at certain times; they will not be overlapping. We will not be running from one place to the next.

Mr. SIMON. Will my colleague yield for a question?

Mr. BOREN. I would be happy to yield to my colleague.

Mr. SIMON. First of all, I wish to commend both Senator BOREN and Senator DOMENICI for leadership in facing some of our problems here.

The Senator mentioned all the committees. Committees are meeting right now. People come into the gallery and wonder how come the Senate is meeting. Right now, we have five Members of the Senate in the Chamber.

I served in the State legislature in Illinois, and in many ways we were not a strong body. We passed way more legislation than we should have. Committees were not strong. But when you were in the chamber, in the State legislature, whether it was the State Senate or State House of Representatives, the other members were there, and they could hear and listen to debate and thoughtfully take part in things.

I can remember one debate when Senator ROBERT BYRD was particularly forceful, and if all the Members of the Senate had heard what he had to say, his point of view would have carried. But there were just a handful of us here to listen to him.

One of the things—and I recognize the immediate proposal does not deal with this—but one of the things that we have to do, I think, at some point is to change our procedure so that when the Senate is in session, we are really in session and Senators are here.

I thank my colleague for yielding.

Mr. BOREN. I thank my colleague for his comments. He is absolutely correct. He is on target. We hope that these recommendations—which are included in this amendment, by the way—which set up a sequencing of committee meeting schedules would also make it possible for Members to be on the Senate floor when we are really conducting business. We have an opportunity to reform the system, to begin to get the staff back down to reasonable levels. I am here not denigrating the work of staff. Members of the staff are dedicated. They do good work. They would do better work if there were fewer of them.

Now, we cannot go all the way back to 2,000. We have a more complex situation than we had in 1946. But we never should have moved from 2,000 to 38,000. That is quite clear. We should have never moved from 38 committees and very, very few subcommittees to now 300 committees and subcommittees. We cannot allow Members of the House and Senate to continue to have waiver after waiver to serve on more and more committees because they cannot really be a part of the deliberative process.

If we would simplify this process, get rid of our own bureaucracy, the American people would also be able to fix responsibility. They would know which Senator it was or which group of Senators killed a bill or passed a bill. They could hold them accountable in the next election. Now they cannot even figure out what we are doing. It is a mystery. It is a maze.

We cannot even understand it. How many of us can even understand the Budget Act. We have been through a process here in the last few days on the campaign finance reform bill. We have been voting and having filibusters and cloture motions on a motion to disagree with the House, 30 hours of debate, a motion on asking for a conference, 30 hours of debate, a motion on appointing conferees before we can even sit down and talk to Members of the house on that issue.

We could pick 100 other issues. People cannot understand what we do let alone why we do it. We have a budgetary process, and I am going to defer to my colleague and friend from New Mexico to go into more detail on this subject because he has had the privilege of being one of the leaders of the Budget Committee of this institution, and he has provided extraordinary service there, under difficult circumstances because of the process, the process that we have. We pass a resolution to ourselves, telling ourselves what kind of budget we should write. Then we pass another resolution telling us whether we should do it. Then we pass another one enforcing it. And then we give instructions to all the committees to follow suit. And by the time we complete all the process, instructing ourselves and passing resolutions about what we ought to do, we do not have time to do it and very often we do not have it in place at the end of the year.

One of the things we do is reinvent the wheel every year. We go back and every single year you have to pass a reauthorization for every spending program. And then you have to pass an appropriation for every spending program. And of course, before that, you have to have passed a budget resolution telling us that we ought to pass a certain authorizing bill and a certain appropriating bill for that same function. We do it every single year, in spite of the fact that studies indicate that well over 90 percent of the budget does not change from one year to the next. But we spend all of our time and all of our effort and energy reenacting those things that remain the same every year.

Why in the world does the Senator from New Mexico propose to the joint committee, why not have a 2-year budget, 2-year authorizations, and 2-year appropriations? For that 6 or 8 percent that might need changing from one year to the next, we can devote our attention just to that. We can have supplemental appropriations bills that take care of emergency needs, things that have to be changed. But in the meantime we can use that other 92 percent of our time providing oversight over the programs that we passed last year.

Every bit as important, and I would think of more importance, to the average American is not only that we appropriate and spend their money but that we spend some time looking at how it is being spent. We pass a program. We pass billions of dollars to fund it. And then we spend almost no time looking to see if that money is being spent wisely or as it was intended to be spent. What progress could come if we would pass a 2-year budget, 2-year authorization bills, 2-year appropriations bills. The American people could engage in long-range planning, at least 2 years instead of 1 year, and we could spend additional time providing oversight for the American taxpayers to determine how their money has been spent.

Now, Madam President, we are not going to restore the confidence of the American people overnight. I would not pretend to say that this package of reforms solves all the problems. For example, I would like to see included in it—and we were not able to at that time complete our work on this proposal—I would like to see us pass provisions that would make sure we live under the provisions of law under which we insist the American people live. We pass labor rules, wage and hour laws, safety laws, and we say we will send inspectors down to every little, small business to make sure you comply with all these laws, and then we say, by the way, we exempt Congress.

No wonder we are not sensitive to the burdens we are placing on small businesses and other Americans with some of the laws we pass, because we do not have to struggle with living under them ourselves. That needs to be corrected.

We have an ethics process, for example, in which we are the judge and jury of our own Members if they are charged with misconduct. I think the American people would have much more confidence in us if we had some people from outside the membership of this organization looking at ethics cases. It

is very difficult. How do you judge a colleague? Do you judge a colleague with whom you serve on the same committee? Or maybe a colleague who has a life-and-death power over some bill you are trying to pass? Yet you are asked to judge them in terms of their ethical behavior? So are other things that need to be done.

But this proposal now before us, the work of a joint bipartisan committee with hundreds of hours of hearings, 240 witnesses, 36 days of hearings, much tribulation, much working together, with Democrats and Republicans joining hands to do very significant things.

It does cut in half the number of subcommittees. It does cut in half individual Senate committee assignments so that people can focus this time. It abolishes the four joint committees that are unnecessary. It does mean that Members have to be at the committee meetings if they are going to cast a deciding vote on whether a bill is going to pass or not. They simply cannot send in the proxy and let somebody else vote for them.

It reforms the budget process. It establishes a 2-year process. It does require quarterly deficit reports so we know where we are in terms of trying to get the budget deficits under control.

It does bring about a 12-percent reduction in staff so that we can begin to get on the right track and stop the creation of unnecessary work for both the Members and the staff. It does require that we have some kind of control over additional people that are sent to work for us by other agencies of Government.

It does simplify our floor procedures so that we cannot have so many filibusters on so many things. So it begins to fix accountability, and it begins to help this institution function in a more workable way.

Madam President, the American people are going to know whether or not we voted to take this significant first step. I think it would be unthinkable for this session of Congress to adjourn without the Members even voting on recommendations that they themselves said they wanted to receive. They appointed us, 12 Members of the Senate and 12 Members of the House. They asked us to work hard. We did work hard. They said we do not want a proposal that is a pro-Democratic proposal or a pro-Republican proposal. We want to have something that will be in the national interest, something on which Republicans and Democrats can join hands. We have done that.

We had a unanimous-consent vote in our committee in terms of bringing this package of recommendations to the full Senate. The chairman of the Rules Committee, Senator FORD, who is on the floor now, was a member of our reform committee, and he also chaired the Rules Committee deliberations on that proposal. His committee spent many hours working on this proposal as well. It would be a shame and a disgrace if this Congress should adjourn without taking positive action on these recommendations.

There is a major disconnect between what we are doing and what the people want us to do. They want us to function efficiently. They want us to have careful oversight over taxpayer dollars. They want us to engage in long-range thinking and not short-term politics. They want us to quit spending so much of our time raising money from special interest groups to finance our campaigns and concentrate on the problems of the country. Above all they want us to quit playing petty partisan games like children in the schoolyard calling each other names, and figuring out how the Democrats can beat the Republicans or the Republicans can beat the Democrats or how we can use this institution not as a forum for making these decisions that are needed by our country, but as a forum for scoring political points, figuring out how we can get that vote to embarrass with an amendment that will put the other party on spot so it will be on the 6 o'clock network news.

As the American people have become more and more fed up with partisan politics, this institution has become more and more polarized along party lines. Here we come with a recommendation that does not come from that side of the aisle or this side of the aisle. It comes from both sides of the aisle. It comes as a proposal that is in the benefit of this country. It comes as a proposal from a committee that decided we will stop being Republicans or Democrats and we will be Americans for a change.

For us not to act positively after that kind of bipartisan effort would be a message to the American people that we do not care if 86 percent of you do not like the way we are doing business, and we do not care if 80 percent of you think we do not represent you, that we do not care about people like you; we are not concerned that the trust essential for the functioning of our Government has been broken between our institutions of Government and the American people.

We are willing to take that chance. We are willing to put at risk these precious political institutions for which men and women have died in one generation after another, in which those who formed this country in the beginning set up these institutions and had the intellectual insight to form them, and then the generations that have loved them one after another, even risking their lives.

We are willing to jeopardize the future vitality of these institutions because we are more interested in protecting our party's advantage or the little personal empires so we can have three more staff members for that unnecessary committee; so we can put another line on our stationery. Far be it from us to give up any of our little power bases in the name of accountability and efficiency of an institution that does not even belong to us. It belongs to the American people—not to a single one of us.

Madam President, they cannot vote. But we can. We are the trustees of this institution. How long are we going to wait to act? Are we going to wait until only 1 percent of the American people have confidence and trust in this institution? We are down to 14 percent. How long are we going to wait to act? It has been 46 years since the last significant reform of this institution. How long are we going to wait to act?

In the last election the American people spoke in every way they could, even voting for an independent, third-party candidate for President in record numbers. Why? Because they were trying to express their frustration. And in State after State, including mine which passed it by a 2-to-1 majority less than 10 days ago. The American people said we cannot do anything about it, we will turn to term limits as a radical solution if all else fails.

They have told us in every way that they can. How long are we going to wait? Are we going to wait until there is a march on Washington? Are we going to wait until the American people become so angry and so frustrated that they lash out in ways that might be destructive in the long run of the political process?

How long are we going to wait? My appeal to my colleagues is wait no longer.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. BOREN. I am happy to yield.

Mr. DOMENICI. Will the Senator from Oklahoma add to his list? He mentioned the shameful things. Would he agree with this Senator that it would be shameful if this measure was defeated on a procedural vote by using an arcane provision of the Budget Act that says you cannot pass a bill on the floor of the Senate that affects the budget process unless it is reported by the Budget Committee? There are no dollars involved in this bill, are there, other than we are going to save money?

Mr. BOREN. Absolutely not.

Mr. DOMENICI. Why should the Senate defeat this bill on a point of order that it violates the Budget Act? The Budget Act most people think has to do with the budget, with dollars. They asked us to do this. They appointed us to do it. And sitting over here in a dark little corner is another part of this process that people do not understand; namely, this whole bill might fall, or we may need 60 votes, because the Senator is going to say it should have gone to the Budget Committee so they could

have looked at two or three provisions that have to do with the budget. Is that not correct?

Mr. BOREN. I thank my colleague for his question. He is absolutely right.

Madam President, if on a matter of this importance, an opportunity to reform this institution, this is sidetracked on a procedural basis and Members of this institution go home and tell the voters, "Well, we would have voted for it but, of course, it would have violated this arcane procedure that we have," all I can say is if it is defeated on a procedural vote, giving Members an opportunity who do not really want reform to say "I had to vote that way because of the procedure," all I can say is I think 14 percent is a true high approval rating for this institution to have if that is what happens.

Let me close with this: I said it had been a privilege for me to serve here. It has been. Some of the finest men and women I know serve in the U.S. Senate. I have great admiration for a large number of my colleagues as individuals.

I am sure that never again in my life will I be associated with people who will have as high a commitment to serving their country as many of the people with whom I serve in this institution. And the saddest thing of all, to me, is to see Members come here, particularly the new Members who come here, with such a strong desire to make a difference, to render a service, to leave this institution stronger than they found it, to put something of themselves back, give something back to the country, so that when we hand over our political institutions to the next generation, to our children and our grandchildren, they will be even stronger than we found them. Think about it. Every succeeding generation of Americans has passed on to the next generation a country filled with more opportunity for them than the preceding generation had enjoyed.

Madam President, what a sad day and what a tragedy it would be if those who have come here desiring to serve, desiring to give of themselves, would pass up the opportunity to change the process, which so beats down the will of individual Members of this institution to make a contribution, and many come to feel it is almost impossible to get things done. It is not only the American people who think it is impossible to get things done here. It is many of the best Members of the House and Senate who have come to that conclusion themselves. And, regretfully, in many respects, I have come to that conclusion. That is why I am seeking another opportunity to serve the public where I think, at the end of the day, I will at least have the satisfaction of knowing that I have made a difference, particularly in the lives of young people who will be coming along in the next generation and providing leadership for this country.

So, Madam President, I appeal to my colleagues. So many have said, "I want to get things done, but the process prevents me from getting things done." Well, this is our chance. This is our chance to reform that process that takes away from our energies, that in the longrun defeats our resolve and our determination. Let us change it. Let us not wait. We have waited far too long. Let us not take the risk that comes from undermining the trust and confidence of the American people in this institution. We would be irresponsible indeed to allow that risk to continue.

It is time to act. Let us do it today. There is an opportunity. Let us put aside our own personal ambitions, our own personal empires, carved out with this institution, and let us take action. Let us take action that will make this institution vital, active, long range in its thinking, and accountable to the American people.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, while I cannot applaud the Senator, I really commend him on what he just said. I only regret that, as he said so eloquently, the way we are getting this reform measure up is not going to permit the American people to find out what we are recommending and what happens here. Obviously this matter deserves a lot of attention and it probably should have had a full week of debate at some point in time, and all those who wanted to pick it to death could come down, one by one, and try it. But put this measure that we were asked to pass before this body and before the American people for a long enough period of time for them to understand.

I thank the Senator very much for his remarks. He will be missed around here.

The PRESIDING OFFICER. If the Senator will suspend, it is incumbent upon the Chair to advise the galleries that the rules of the Senate do not permit the expression of approval or disapproval.

Mr. DOMENICI. Madam President, let us think back a little bit to June, July, and August, 1992, because it was in August 1992 that this body, the U.S. Senate, passed a resolution. I do not think there was a single dissenting Member to that resolution. That resolution asked a joint bipartisan committee to recommend reforming the U.S. Senate.

Why did that come about in August 1992? Because, I say to my friend from Oklahoma, the seeds were sown then that yield the 14 percent approval rating of Congress. Either scandals or alleged scandals in the other body and in chambers around the U.S. Capitol were rampant. The people were absolutely up in arms. They may not be up in arms today, but they are very close to giving up on us. When only 14 percent say they think we are responsible, that we might change things for the better, that August day when this resolution asking that Congress be reformed was a good day for the American people. And then everybody should know that this is one of the few times that a joint committee took a charge as seriously as this joint committee did.

The first hearing had all five leaders from the U.S. House and Senate; the first time in history. They all appeared, and they were saying: Reform, reform, reform. There were 36 hearings in 6 months; 243 witnesses; 37 Senators. Every Senator and 4,000 staff people were surveyed. There were 500 proposals, or more, considered. We continually consulted with our two leaders—the leader on that side and the leader on this side. We completed our work in 1 year, under budget, and returned 40 percent of the money that we got to do the work. Then although there were some who said they are voting for it in committee, with reservations, the truth of the matter is that these were unanimously recommended. That is, the 33 recommendations received everyone's vote on that committee that was assigned to do this job.

(Mr. KERREY assumed the chair.)

Mr. DOMENICI. Obviously, something is wrong with the way we do business. I am not one who thinks changing things will fix everything. But we are hearing a lot about reform these days, reforming the lobbyist activities, reforming gifts to the U.S. Congress and to members of our staffs. We have heard a lot about gifts in the White House and maintaining independence. We have heard many, many hours of talk on the floor about campaign reform. One of the leaders is my friend, Senator BOREN, who just spoke. I say that none of those reforms is as important as reforming the processes, the committees, the subcommittees, and the way we do business here on the floor of the Senate. Those reforms pale in proportion to making this institution and the one across the Capitol, as I see it, more accountable, more responsible, and more understandable.

When I took this job, after 1 week of hearings, I put in my head what I was trying to do. I believe to have a democracy and have confidence in legislators in the Nation's Capitol, legislators have to be accountable for what they do, I believe that they have to be responsible, and I believe they have to do work that is understandable. If you are doing mumbo jumbo and begging off on votes because they are technical, or hiding behind multiple committees that are hearing the same issue, and it was not us it was them, then it is not understandable and nobody can hold you accountable. Maybe that is the way some people like it to be. But I

perceive that is what we were asked to fix, to make this place more understandable and make Members and committees more responsible and accountable.

I believe we did that, and I am going to repeat now and two or three times before we have the first vote because I believe the first vote is going to be on a technicality. I believe the first vote is going to be to wipe this bill out because of a budget point of order. What that is going to do, I say to the occupant of the chair, it is going to put us behind the eight ball right from the beginning because we are going to need 60 votes to prevail over that point of order.

I do not believe anybody assumed when this committee was assigned to reform the U.S. Congress—or excuse me—make recommendations, I do not believe anybody assumed that its recommendations were going to require 60 votes, at least not recommendations that have to do with 2-year budgets, 2-year authorizations. I do not believe anybody thought that the package of reforms were going to come to the floor and be subjected to a point of order on the basis that we did not send it to another committee. Is that not amazing?

We were charged with streamlining the process, make it so it is understandable, make it so you can be responsive and responsible and right off the first time the bill hits the floor we are going to use a process. We are going to say, no, we did not mean what we said. We want it to go to another committee.

Just so everybody will know, we recognized that we had this problem. I want to print in the RECORD a letter that we jointly sent. The chairman and I as vice chairman sent a letter to the leadership on August 10, and that letter clearly said that we do not think the intention was that this should go to other committees. We asked our leadership to help arrange to get this to the Budget Committee and get it cleared and get it out either without recommendation or with recommendation of pass or do not pass.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, August 10, 1994.

GEORGE J. MITCHELL, Majority Leader,
ROBERT DOLE, Republican Leader,
U.S. Senate, Washington, DC.

DEAR GEORGE and BOB: We are writing regarding the Senate's consideration of S. 1824, the Legislative Reorganization Act (Cal. Order #503). We fear the Senate's tight schedule and procedural roadblocks could make it impossible to produce reasoned reforms in Congress's operations this year.

Because S. 1824 contains matters in the Budget Committee's jurisdiction, it is subject to a point of order under section 306 of the Budget Act. If this point of order was raised against the bill, it requires 60 votes in the Senate to waive it.

We ask that the bill be referred to the Budget Committee for a limited time period, that the bill be discharged from the Budget Committee at the expiration of the referral, and that the Budget Committee's actions on the bill be limited to making recommendations. We hope that this action could take place quickly so that the bill could be taken up on the floor within a week after the recess.

We realize that this is an unusual request. However, this bill is unique in many respects. Last year, the Joint Committee on the Organization of Congress conducted the most exhaustive study of Congress ever. This effort led to a unanimous recommendation for legislation to reform the Congress, which we introduced as S. 1824.

Two years ago, the Senate passed legislation that called for Congressional reform and created the Joint Committee. After all this effort, it would be ironic indeed if the Senate did not bother to even consider Congressional reform legislation or if it died on a procedural motion.

We appreciate your consideration of this request.

Sincerely,

DAVID L. BOREN.
PETE V. DOMENICI.

Mr. DOMENICI. Mr. President, I lay no blame on anyone. But essentially that request was denied because nothing was done.

So here we are charged with trying to make things work better and we are going to get thrown off this floor by a procedure that says we really did not mean it. We did not mean your joint committee ought to do this. We meant when you are finished you ought to take it to the Budget Committee, take to the Governmental Affairs Committee, and you ought to take it to the Rules Committee. By the time we finished, we would be into the next century.

So we are here today in a very extraordinary way. You are going to get to vote. You are going to get to vote. If anybody thinks when they vote on that point of order—I will move to waive that point of order or my good friend from Oklahoma will—that it is not a vote on this bill, that it is a process vote, they are doing precisely the kind of thing in this body that we were asked to try to fix to make things understandable, forthright and accountable.

I would say to anybody that is going to vote against this, if that point of order is denied, then this would be subject to amendments. So it would be here and if Senators want to amend it, they could. We at least would have one vote indicating that "committee, you did a good job." Let us lay the work of the committee before the Senate.

Having said that, I want to remind everybody in one sense, when they vote to waive the Budget Act—or let me put it another way: When they waive to kill this bill on a point of order, they have just decided that they do not want to cut the subcommittees of the Senate in half. They are going to be voting that they do not want to cut individual Senators' assignments by 25 percent. They are going to vote that they do not want to abolish any committees. They are going to vote that Senators cannot decide the way the committees are going to be reduced. Under our recommendations, Senators are going to have that choice and some committees that do not have enough Senators choosing it are going to be rolled into other committees with appropriate jurisdiction. They are going to be voting against a proposition that says proxies cannot affect the outcome of a vote.

How many times do the American people ask how did that happen? How did this vote get out of there? They happen to catch it on C–SPAN and there were not very many people in attendance. Maybe five Senators. They heard three vote "no" and two vote "aye." And all of a sudden the bill is reported out 14 votes for it. They are saying why? It is because you are going to vote against the proposition that is going to say proxies cannot be used to affect the outcome of a vote.

Committees are meeting right now. I urge every Senator listening to pull out his little calendar for the day and see how many meetings are scheduled at the same time and we are not even in a real legislative session. If this was a month ago and, you took out your calendar you would probably have three meetings at the same time at 10 o'clock this morning. If you are on the Finance Committee, you have one. Obviously, if you were one of those Finance Committee members who is also on Governmental Affairs, you might have an investigative subcommittee there that you are supposed to be at, and then if you are on the Energy Committee, like I am, you would have that there.

Frankly, we believe the time has come to use computers and modern technology to force the scheduling of meetings so we do not have a maximum of overlap. Instead of just kind of arbitrarily saying too bad if you cannot come, the chairman has just decided that 1 week from today at 9:30 there is a hearing. That is what you are going to be voting against.

Mr. President, the Congress of the United States under our Constitution goes in session for 2 years, and 2 years happens to be one Congress. What do we do that befuddles the American people, frustrates Senators? One of our opponents who will raise the point of order, a very distinguished Senator, has said one of the things wrong with this Congress is fractured attention.

My friend from Oklahoma quoted Senator BYRD. He encapsulated what was one of the things wrong, "fractured attention." My notion of fractured attention is that we do things over and over and over again when it is not necessary.

Just think with me. The first year of the 103d Congress—remember it goes on

for 2 years—the Defense authorization bill, they do one for 1 year because the appropriators are going to do one for 1 year. So if they do their work, they come to the floor and we vote on the same issues. My good friend from Arkansas will raise at least three amendments on the Defense authorization bill. Some time later on my good friend from Hawaii, Senator INOUYE, will bring a 1-year appropriations bill. We will again vote on the same issues.

The public is confused. They ought to be. And as it has developed now prior to all that, they will vote on a budget resolution, and even though the budget resolution says there are no line items in this, you just set a big dollar number for defense and all the other discretionary spending, you will have a vote probably on the same three issues because someone wants to make the point that you can get by with less defense if you take out these three things.

So in 1 year in this body you will vote three times on the same issue, and then it goes on to conference. You confer over there and you bring it back, and you will debate and vote again on the same issues in one combined package.

Just think of the wasted time, effort, and redundancy to do that all over again the next year. It is the same Congress. Hardly enough time has gone by for you to have even left the Appropriations Committee.

It seems to me you could almost sit in there and wait around for the next batch of appropriations—it comes so often. The year ends October 1. You come in this January. By February and March you are working on appropriations. You work on it all year. You vote on 13 appropriations bills. You have voted on a number of authorizing bills, some for 1 year, some for 2 years. You would have voted on a budget resolution for 1 year and you come back the next year and do it all over again.

Frankly, there probably is going to be some evidence presented here or some contention that that is good for the country. They will argue that that is how we get oversight, that each year if you do it every year you get a chance to look at the appropriations process annually and that gives you good Government and you get to develop good programs.

I believe that is not the case. As a matter of fact, I believe we are not getting any oversight because we do not have any time to do oversight. Anybody who can tell this Senator that with an annual budget, an annual appropriation and annual authorizations that there is time left over to go over and see what is happening to Medicaid, what is happening to any of the programs you got around—is fraud occurring? Go over and look at the housing programs. They are in such a mess that Congress does not even know which way to turn. We do not have the slightest idea how many billions of dollars it is going to cost for one of the programs that we have been funding on a short term that should be on long term. It could be $11 billion a year that we are short.

That is hardly enough time to have a hearing. Why? Every year you have to do an appropriations bill, you have to do a budget resolution, and you have to do a number of authorizations, at least authorizations for defense.

Now, many, many months ago—in fact, the months have now gone into years—a very distinguished Senator, who also happened to be from Oklahoma, Senator Bellmon, as he left, he kind of delivered one of his "Here's what I've learned and here's what the Senate has meant to me" speech. A very basic, simple suggestion was made. Essentially, the Senator from Oklahoma, Senator Bellmon, said: "Wouldn't it be marvelous if, for 1 year out of the 2, committees that have jurisdiction over programs had no excuse not to have hearings about them and oversight and to think about them because there would be no appropriations bills or a budget to consider that year?"

Essentially, he was suggesting that out of a 2-year Congress, you take 1 year and do all the appropriating, do the budgeting, do the tax writing, and then the second year do oversight, have hearings, in-depth hearings, to find out what is going on in the country, what is going wrong with legislation, what do we really need that we are not doing. He said, "Wouldn't that change things?"

That is exactly what this committee said we ought to do. And they said we ought to get quarterly budget reports and, yes, there could be supplemental appropriations and we are going to have some come down here and say, "That will not work."

Well, the Congressional Budget Office says that only 4 percent of the discretionary spending—and, to put it in everybody's language, discretionary spending is what you appropriate, what you must appropriate, because, by definition here, it lasts for 1 year and you have got to appropriate it again—4 percent of the discretionary spending must be annual because of unpredictable funding patterns.

That means 96 percent of discretionary spending does not need to be funded on an annual basis because it is predictable. Now why do we then insist on letting the 4 percent drive the 96? We could at least figure out a way that the 96 percent that is predictable go on a 2-year basis. That will have to take a little thinking, a little carving out.

Of the 725 discretionary accounts, says CBO, 63 percent changed by less than 10 percent from the previous year. Now, frankly, if we set about to do the 2 years, we would even be able to figure that out where there would not be any problem between the 2 years, because we would learn how to do it and it would not take very long. And then we would do the budget resolution for 2 years. We would not have a reconciliation bill. That is that big hodgepodge we put together to try to make some savings that are required by the budget resolution. We could not do those more than once every 2 years.

Now, I ask the occupant of the chair and every Senator that is listening, would not this make a dramatic, positive change in the U.S. Senate?

The committees that you are on, I say to Senators, that do not have time to have in-depth hearings, 2 or 3 weeks at a time of an oversight nature as to whether our veterans' hospitals are working right or not, whether the Indian programs for the Indian people are working or not, whether the bureaucracy is carrying out our will or have they gotten to a point where they are doing it their way.

In fact, I believe that our programs are in such a state of shambles because of management misdirection, and improper writing of laws, that there are scandals just waiting around to occur.

And guess how we do most of our oversight? I checked for just 3 or 4 weeks to see what some committees were doing. Most of the oversight that goes on goes on because somebody in the press found a program that is not working or they found a scandal out there that we were being ripped off and they write about it. It does not take a committee 2 weeks to get on with that. We ought to find those.

That is why the American people are angry at us. We are not spending enough time trying to find that out. And you speak of reinventing Government. You are not going to reinvent Government by just reducing the number of Federal employees and consolidating a few programs. You are reinventing Government when you find out what is not working in Government and do something about it across the board.

And I defy anybody to come here to the floor—dedicated appropriator, dedicated authorizer, dedicated tax writer, and entitlement writer—and tell this Senate that there is plenty of time under this system to get this done.

And I would also say, for those who think there is plenty of time and we go to the 2-year system, 1 year for one part of it and another year for the other part of it, for those of you who think we have plenty of time, it might be that we could even get out of here earlier. Maybe we could cut all this time in Washington in half.

I know Senator Baker and others have been suggesting we spend way too much time here. One way to do that is not to have to do everything so redundantly, over and over again every 12 months.

Now, when you vote within the next couple of hours to kill this bill on a point of order, you are voting against all these things that I am talking about. And you will have decided that you are going to take the easy way out, use a budget point of order that has literally, literally, said that the Budget Committee should have had this sent to them. This bill that we have ready here, this bill that we have on the reorganization of the Congress, did not go to them. Thus, they did not have time to look at it, although it went to the Rules Committee, although a bipartisan committee voted unanimously to report it out after 1 year of hearings, you just kind of cavalierly vote that it is subject to this procedural deficiency. If you do that, you are voting against these things that I am talking about and more because we have not listed all of them yet. There is plenty more reform.

Senator BOREN has alluded to reducing the number of subcommittees, cutting them in half. Well, I do not have any more confidence that if we do not do something like this that we will ever get them cut back. There is a waiver rule. The waiver gets changed all the time and the subcommittees grow.

Frankly, I have a lot of subcommittees. Somebody could come down here and say, "You serve on slightly above average." Of course, I do. I have been here for 22 years. I take my work seriously. But I cannot even go to all the subcommittees. Nobody works harder than this Senator. I cannot make it, because I have two or three at the same time. That is ridiculous.

The American people are wondering who is doing all this work up here; who is writing all these bills.

I just mentioned to my good friend, since 1970, on average, bills that come out of here are five times longer in terms of number of words used—five times. Why do you think we need so many staff? Because we do not have enough time to put our own attention on it and do it ourselves. We do it very superficially. And very bright, smart staff—God bless them—they help us all. They do the work. That is why the numbers have gone up, too.

We decided if you go with this 2-year cycle, you can reduce the staff, too. And so we are recommending that in here, that Congress get littler and its support agencies be more responsive. At the General Accounting Office, over 5,000 people work there.

Our bill says that in the second year of every Congress when we are supposed to be doing oversight, the primary role of the GAO—primary role—would be to help the committees and subcommittees to see what is going on, right or wrong, with their Government that the taxpayers are paying for. Those are important things.

Mr. BOREN. Mr. President, will the Senator yield?

Mr. DOMENICI. I will be pleased to yield.

Mr. BOREN. First, I commend the Senator on the comments he has just been making. I think those who have heard those comments understand why I feel a great debt of gratitude to him for the leadership he provided in this joint committee, bipartisan committee, on the reform of Congress.

Let me say, the spirit which he indicated and demonstrated throughout our proceedings is exactly the kind of spirit we need if we are going to get this country back on track—that is, thinking about what is in the national interest before we think about what is in a personal interest or in a narrow, partisan interest. I salute him for the spirit with which he served as the cochair and vice chair on the Senate side of that committee.

Would the Senator agree with me that it would be best if we could be having this debate in the format in which we are not having to tack on this comprehensive set of recommendations to another pending matter; in fact, an amendment in disagreement to a conference report on appropriations for the District of Columbia? As I have said, it is ironic and, indeed, symbolic that we are having to take this action, because it again demonstrates that it is very difficult in this institution to do our business in a straightforward fashion so we can focus our attention in an orderly sequence on matters that should come before us.

Would he agree with me that it would not have been our preference to have acted in this way and that, indeed, if we could have been assured by the leadership on both sides of the aisle—indeed, if we could still be assured by the leadership—that the recommendations of our committee as they came through the process, through the Rules Committee, both in terms of a bill and also of a resolution, that, if we could have assurance that we could have those matters considered on the floor, scheduled to a time certain, given a chance to have orderly and comprehensive debate on these proposals to amend these proposals and have them considered as they should be considered, that, indeed, is still our preference? It is only because as of this moment—and I suppose there is still time, we could receive such assurance and I hope we would—but as of this moment we are having to follow this procedural mechanism simply because we have not been allowed to receive those assurances which could be given by the joint leadership here, and that would be what would be preferable to us and I am sure to others on a matter of this importance.

Mr. DOMENICI. I could not agree more, and I thank the Senator for his comments about my work. I want to share just one more fact with the Senator.

We have one Appropriations Committee. It really is supposed to spend our money except for those programs we create which are entitlements. Let me, for the record, state what an entitlement is because it is very confusing. An entitlement is a benefit, either in kind or in dollars, that a citizen can go to court and sue for and get the money. So all these other definitions of entitlements pale before that one. That means Social Security recipients, if we stop paying them, they can go to a Federal court and have the Federal Government ordered to pay them. That means Medicaid, Medicare—the same kind of thing.

All those programs that are funded by the Appropriations Committees, the education program and every other program, is supposed to be authorized by a committee. We do not just pull it out and pay for it in appropriations.

This system is so broken down that $57 billion of appropriated money annually is not even authorized. We run around and say we have these two wonderful systems working together: One is the horse and one is the cart. But, frankly, the horse is broken down. The horse is the authorizing committee, and they say we are broken down because there are too many processes around here. They blame the budget process. Then they blame the appropriations process. Why do we not just say we want them all to be stronger? But they cannot all be stronger and have to do their work every year over and over again on the same or similar subject matter.

I want to go through just a couple more of what is in this bill. I repeat, the process we are going for is this: The Boren-Domenici amendment, which is the entire recommendation of the special joint bipartisan committee, is pending. If we defeat the point of order and adopt the amendment, it is subject to amendment. So those who want to amend it could amend it then.

This Senator, as a Republican—I went to those committee meetings in a total and pure spirit of not being partisan. But I must tell the Senate that I did not agree to be for pieces of this, one piece at a time. I am for some floor procedure amendments. They are in this package.

Motion to proceed? We do not take as much time on it. If this package is adopted, Senate resolutions have to have 10 sponsors. We did that, too. But I am in favor of these changes, if we adopt the full package, because I can see them all weaved together and they will make a tapestry that will make this place work better. But I am not going to be for pieces of it, and I urge my friends on this side of the aisle, if we dismember this into little pieces, I am going to urge they reconsider the whole thing and wait around until we can get back and have another package.

Let me conclude. We believe in an orderly process, cutting the number of

subcommittees in half and making it almost impossible to add them by waiver because you have to bring it to the floor of the Senate and vote. We abolish four joint committees. Obviously, we may have lost a number of votes right there, because perhaps those who are on those joint committees will come down here and vote procedurally on killing this bill on a procedure called a point of order. But we think we did what you asked us to do.

On the 2-year budget cycle, some are going to come down and say, "Why do we not do the budget 2 years, but let us do appropriations every year?" Frankly, I believe there is more reason to do a budget resolution every year than there is appropriations every year, and I say that having been here a while and having done both. I believe that. But I think 2 years on both would be far better for this institution and for the American people in terms of our being able to get our job done right.

I want to close by saying this U.S. Senate is a fantastic place to serve. I have been very privileged. I hope I can serve here a lot longer. But I do believe that the most important thing we could do is to make the U.S. Senate work better. I believe we are too fractionalized, we cannot develop any attention span, and we relegate and delegate our job and our work too much to others because we are asked, under a process and procedure, to comply with rules and other things that make it almost impossible to get our job done.

So, sometime today there will be a vote. Obviously, I have told my colleagues what I think it is going to be. I urge everyone to give this reform a chance and deny the point of order and then let us take a look at it once it is before us in its true form.

I yield the floor.

Mr. PELL. Mr. President, I rise in opposition to the Domenici-Boren amendment because it does not reflect the revisions in congressional reorganization which were recommended by the Committee on Rules and Administration.

I am opposed to the proposed elimination of the Joint Committee on the Library, because I believe the Joint Committee fulfills a useful role and its proposed elimination would be a meaningless reform.

I should note for the record that I have served on the Joint Committee on the Library for many years and am its vice chairman during the 103d Congress. I might add that I regard this service as somewhat of a family tradition inasmuch as my father served on the joint committee as a member of the House of Representatives in the 1920's.

I can understand why the Joint Committee on the Library, which dates back to 1802 and is probably the oldest extant congressional committee, might be dismissed as an obsolete anachronism. But I would contest such a view and suggest it is more accurate to view the Joint Committee as a very useful vestige, which has survived precisely because of its utility.

In the early days of the Republic such joint committees were established for administrative purposes, and the Joint Committee on the Library filled just such a role for nearly a century. In effect, it managed the day-to-day operations of the Library, which in those early days must have been a very modest task.

But with the explosive growth of the Library's collections following the passage of the 1870 copyright law requiring the deposit of copyright items, the management task outgrew the joint committee's capacity and in 1897 Congress assigned to the Librarian of Congress direct responsibility for day-to-day management.

There remained a need to oversee and give policy direction to the Librarian, and that is what the role of the Joint Committee has been since that time. It is a role of consultative supervision somewhat akin to that of a corporate board of directors. Since the Joint Committee has no legislative authority, it exerts its influence by verbal advice and written consent, which reflects its members sense of congressional will.

The consultative process is largely informal and unstructured. The Librarian frequently simply advises the Joint Committee of various matters, sometimes seeking the assent of the chairman and vice chairman, representing as they do by tradition, the two Houses.

On matters of substance on which the formal approval of the Joint Committee is necessary and appropriate, the membership is generally polled by document and assent is registered by signature. The Joint Committee meets only infrequently, and then generally for informational hearings when there would be a clear benefit from a multilateral exchange of viewpoints.

I would submit to you that this arrangement, while not perfect, serves very effectively to coordinate congressional supervision of an institution which has a wholly unique relationship to the national legislature. The Library is the creature of the Congress and the Congress is in turn highly dependent on the Library for substantive support. There must be a continuing mechanism in place for transmitting the will of Congress to the Library, and the Joint Committee, in my view, is the most effective mechanism for this purpose.

I would further submit that there are clear advantages to both parties in having the mechanism of a joint committee. It gives the Library a single source to which if can turn for an expression of policy which represents the will of both bodies. And in this connection, I would note that the joint committee structure forces interhouse consultation at the staff level, and then assent by members, before any action of the Joint Committee can result.

The advantage, from the congressional point of view, is that the joint committee structure requires us to find a common ground of agreement on any given issue, and once having done so, we are protected, to a good degree, from having our client, the Library, play off one House against the other in seeking to manipulate congressional will.

I would hasten to add, parenthetically, that in my view the Joint Committee hardly poses a threat to the benefits of bicameralism which were argued so effectively by James Madison, because the function in this case is limited to consultation and administrative approval, relating to an institution which is intimately tied to the Congress as a whole and not to the House or Representatives or the Senate as separate entities.

Finally, I would note that the work of the Joint Committee is performed by staff members who have many other duties but who would probably have to perform the same functions with respect to the Library if the Joint Committee were to be abolished. So I submit that the proposed abolition would yield no significant economy and would only have the effect of removing a useful framework for coordinated oversight.

Turning to another aspect of the proposed reorganization, I would like to record my reservations about the proposal to limit the number of subcommittees that would apply to most committees. Speaking from my perspective as a chairman of the Committee on Foreign Relations, I find this proposal arbitrary and unduly restrictive.

Because the scope of the Foreign Relations Committee is indeed worldwide, we traditionally have organized our subcommittee structure along geographic lines and to a lesser extent along substantive lines as circumstances dictate. We currently have seven subcommittees in all, of which five are regional subcommittees, as follows: Subcommittee of African Affairs; Subcommittee on East Asian and Pacific Affairs; Subcommittee on European Affairs; Subcommittee on Near Eastern and South Asian Affairs; and Subcommittee on Western Hemisphere and Peace Corps Affairs.

In addition, we have a Subcommittee on International Economic Policy, Trade, Oceans, and Environment and a Subcommittee on Terrorism, Narcotics, and International Operations.

It seems to me that any requirement to merge or consolidate the work of these subcommittees could have the effect of reducing the focus and intensity of the committee's attention to the matters it must consider. And I might

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also note that most members of the committee already have limited themselves to only two subcommittees, so in that sense the objectives of the proposed reorganization are already attained, or soon can be with minimal adjustments.

I have the same reservations from my perspective as a member of the Committee on Labor and Human Resources, and as chairman of one of its subcommittees, namely the Subcommittee on Education, Arts, and Humanities.

The Committee on Labor and Human Resources has extremely broad jurisdiction over a wide range of social concerns and presently has six subcommittees to address those issues. In addition to the subcommittee already mentioned, the other subcommittees are: Subcommittee on Aging; Subcommittee on Children, Family, Drugs, and Alcoholism; Subcommittee on Disability Policy; Subcommittee on Employment and Productivity; and Subcommittee on Labor.

Given the broad scope of the committee's responsibilities, it seems to me that the consolidation of its structure into three subcommittees would make for unwieldy workloads at the subcommittee level and result in inefficiency and less effective operation of the committee.

Here too, to the extent the purpose of the proposed limitation is to lighten the workload of Senators, that objective can readily be obtained by enforcing the limitation on the number of subcommittees each member of the committee can serve on, namely two.

For all these reasons, I oppose the amendment as offered at this time. I do so with reservations because I supported the underlying reorganization plan in the form in which it was reported by the Committee on Rules and Administration. I regret that the committee's recommendations have not been considered and hope that they may be revived in the 104th Congress. But the amendment as proposed goes too far and comes to us at the wrong time and in the wrong form. It should be rejected.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1995—CONFERENCE REPORT

Mr. INOUYE. Mr. President, I submit a report of the committee of conference on H.R. 4650 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 4650 making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 26, 1994.)

The Senate proceeded to consider the conference report.

Mr. INOUYE. Mr. President, I ask unanimous consent that there be 1 hour for debate on the conference report, with the time divided as follows: 30 minutes controlled by the chairman and vice chairman of the committee, 15 minutes under the control of Senator BUMPERS, 15 minutes under the control of Senator MCCAIN, that when the time is used, the conference report be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. INOUYE. Mr. President, I ask unanimous consent that the following persons be given the privilege of the floor during the consideration of this report:

David Hennessey, Nora Kelly, Nancy Lescavage, and Herb Nakamura.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. INOUYE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I am pleased to offer the conference report (H. Rept. 103–747) making appropriations for the Department of Defense for fiscal year 1995. The conference report before you provides funds to operate, maintain and equip the Defense Department and our military forces during fiscal year 1995.

There is some urgency to the enactment of this conference report, Mr. President. Title IX provides $299.3 million in fiscal year 1994 supplemental appropriations to meet the unbudgeted costs of emergency relief for Rwanda and for emergency migrant processing and safe haven costs in or around Cuba.

The fiscal year 1995 appropriations bill provides $243.6 billion for the Department of Defense. This amount is within the subcommittee's 602b allocation. Discretionary outlays from the bill will be $250.7 billion or about $50 million below the subcommittee's allocation.

Mr. President, this is a very lean bill. I must advise my colleagues that not every worthwhile program could be accommodated in this austere bill, but the conferees have done their best to produce a bill which meets the needs of our men and women in uniform.

MILITARY PERSONNEL

The bill provides a total of $70.3 billion for military personnel pay, allowances and related costs. This amount includes funding for a 2.6-percent pay raise for our uniformed personnel.

OPERATION AND MAINTENANCE

To operate and maintain our Forces, the conference agreement recommends $80.9 billion. It may be noted that we have exceeded authorized levels for the Service O&M accounts. In the course of our conference, we found that we were able to provide more funding for readiness programs than the authorizing conference had been able to accommodate.

Mr. President, we have added funding for aircraft and ship maintenance programs, unit training activities, and for returning excess Army equipment from Europe. We began this year by emphasizing the need to maintain the readiness of and quality of life for our troops. I believe this bill does preserve that critical readiness for another year.

As a matter of particular concern to the members of the subcommittee we have provided additional resources for the recruiting efforts of the Uniformed Services. We have provided a total of $89 million above the budget request for this purpose.

Also in this title, funds were added for select Defense conversion programs supported by many Members in this body. For example, the conference agreement adds funds for military youth programs, small business loan guarantees, and economic development programs in California, Florida, Michigan, and many other States affected by base closures.

PROCUREMENT

The bill would fund $43.4 billion for procurement, a decrease of nearly $1.2 billion below the amount provided last year.

Significant Army highlights of this action include providing $108 million to keep the main battle tank industrial base alive. The bill also provides funds for Apache and the advanced helicopters to keep these lines open.

For the Navy, the agreement provides funds to complete the procurement of the CVN–76 nuclear aircraft carrier and to support the purchase of three DDG–51 destroyers as requested by the administration.

Significant highlights for Air Force procurement include providing $2.2 billion to buy six C–17 aircraft this year and advance procurement funds for buying eight in fiscal year 1996.

Mr. President, the conference report reflects the strong support of the Senate regarding National Guard and Reserve equipment. While the House earmarked funds for specific projects, the Senate did not.

The conference agreement allows the chiefs of the Reserve components to determine which specific items will be purchased. The statement of the Managers earmarks $800 million for miscellaneous equipment and lists items

which it believes should be given priority, but does not mandate which equipment must be acquired. Within this amount the statement earmarks $505 million for Guard and Reserve aircraft. The conferees intend that these aircraft can be either new production or newly refurbished aircraft.

RESEARCH AND DEVELOPMENT

Mr. President, in order to preserve the technological advantages which the United States enjoys over potential adversaries, the conference agreement made only modest changes to the research and development request.

In other highlights, the agreement funds the Army's Comanche, funds the Navy's F/A–18 E/F program, and the Navy's new attack submarine.

Mr. President, the conferees provided $2.5 billion for ballistic missile defense. In keeping with past practice, the conferees agreed to recommend a number of discrete reductions in this program.

OTHER RELATED AREAS

Mr. President, when H.R. 4650 was considered by the Senate a number of foreign policy provisions were added to the bill. Unfortunately, in conference, the House conferees, backed by their authorizing committees, were adamant that these provisions be removed from the bill. To gain agreement on the overall conference, the Senate conferees found it necessary to recede from the Senate position.

Mr. President, this has been a tough year for the Defense Subcommittee. The funding constraints that the committee had to meet were quite stringent. After 10 straight years of reducing Defense spending, development of a Defense appropriations bill is not an easy task. The Senate, I believe, met that challenge when it passed the Defense bill, and I am happy to say the conferees have also responded to that difficult challenge.

This report reflects a good compromise between the priorities of the Senate and the House. But most importantly, it is a good agreement which will provide for the safety and support of our men and women in uniform. So I urge all Members to support the conference report.

Mr. President, it has become my custom to identify a member of the Defense Subcommittee staff for individual recognition each year. There is one staff member who has served with particular devotion over many years who has not been singled out, one who is most deserved of tribute for his dedication to the Senate Appropriations Committee and this institution. I am speaking of our fine staff director, Mr. Richard Collins.

Mr. Collins began his tenure with the Senate Appropriations Committee on June 12, 1974, assigned to the Foreign Operations Subcommittee. As chairman of that subcommittee, at that time I soon realized that Mr. Collins was a man who possessed great wisdom, uncompromising integrity, and a finely honed sense of duty to his country. Mr. Collins quickly learned the business of the Foreign Operations Subcommittee, and in 1981, I was privileged to promote him to staff director of the subcommittee. He served in that position with me through 1988.

In 1989, I was selected to chair the Defense Subcommittee. There were many who suggested that I needed a staff director with a strong military background to run the Defense Subcommittee. But, for me, there was no doubt who to choose. I knew Richard Collins was the man who could best serve the Senate's interest as staff director of this subcommittee and I was proven correct.

Mr. Collins attacked the issue, learning everything about the Department of Defense. He spent countless days in briefings from each of the military departments, gaining a deep understanding of the pressing defense issues of the day. But he was not satisfied just to listen to what those in the Pentagon were saying. He traveled throughout the United States talking to our military commanders and soldiers, sailors, marines, and airmen in the field.

He reported back to me on the strengths and problems in the Defense Department as he continues to do so today. Richard Collins is my compass. He guides me every day in carrying out my duties to the Senate as chairman of the Subcommittee on Defense. As staff director, he is fully informed on all defense matters and he keeps me updated on the needs of our men and women in uniform.

Richard Collins has served me and, more importantly, this body for 20 years. We in the Senate owe him our undying gratitude for his tireless efforts, his moral certitude, and his dedication to this body. And, Richard, I salute you, sir.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator's 10 minutes has just expired.

Mr. INOUYE. I yield myself 2 more minutes.

Mr. President, this bill, as I indicated, involves over $243 billion. We have just passed a unanimous-consent request to conclude our debate in an hour, and upon its conclusion the report would be adopted, hopefully without a vote.

For those who may not be aware of the process in the legislature, it would seem that this was a very easy process with no controversies. This bill is filled with controversy. This bill is the most expensive measure facing the Congress of the United States. And yet, we come to this day and make it seem so easy. It is so because of one reason. This committee has been blessed with an extraordinary staff on the majority side and on the minority side. If it were not for the staff, I think we would be nitpicking and higgling and haggling for weeks and weeks to come.

So I would like to recognize these staff members: Richard Collins, Charles Houy, Peter Lennon, Jay Kimmitt, John Young, David Morrison, Mary Marshall, Dick D'Amato, Mazie Mattson, and Hallie Hastert. I would also like to make special recognition of Steve Cortese, who has been most helpful, Jim Morhard, and Dona Pate.

We have also had support from the Department of Defense: David Hennesey, Herbert Nakamura, Nora Kelly, and Sidney Ashworth.

So, Mr. President, I know the subcommittee joins me in extending our undying gratitude to these staff members.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I join the Senator from Hawaii, the chairman of our subcommittee, in presenting this conference report to the Senate and urge that it be approved. We filed this conference report on Monday, and it has been printed in the RECORD. It is a credit to the subcommittee as a whole, under the leadership of my good friend, Senator INOUYE, that this bill is before us prior to the end of the fiscal year. It has been facilitated in terms of the work we have done in the subcommittee by the support given to us by the chairman of the full committee, Senator BYRD, and the ranking member, Senator HATFIELD.

This bill, as the Senator from Hawaii has noted, meets the 602(b) allocation that was submitted to our subcommittee. We have not made any broad general reductions. There are no across-the-board cuts in this bill. I do not believe in them anyway. I am pleased to say that this conference has gone through this bill item by item. We have made specific adjustments. They have been consistent basically with the positions taken by the two military committees in both the House and the Senate. We have done this through consultation with leaders of the military and with representatives of the President through the Department of Defense and the White House. In other words, this bill has been very well staffed. It has been the subject of a great many individual consultations through the services of my good friend, the chairman, Senator INOUYE, and myself, with many other Members of the Senate and the House. We are privileged to work with a great team in the House, headed by Chairman MURTHA and the ranking member there, Mr. MCDADE.

I wish to say that when I appeared on the floor of the Senate earlier this year and talked about this bill, I was very much concerned that the authorized funding presented to us was too low to

maintain our national security. I did not think it would support the efforts of our military to provide for our national defense consistent with our existing international obligations and those that seem to come on us now one by one. We are expanding our role as far as the use of our military, and the events of the past weeks confirm my concerns that I expressed here before. I see no reason to repeat them. I will add some comments concerning the stress that exists now for the men and women who serve in uniform for our country throughout the world, and particularly upon their families.

But let me state, Mr. President, over the recent recess, along with Senator WARNER of Virginia, I took the occasion to have some meetings with a series of military commanders and with our intelligence officials in Europe. We did discuss the operations in Bosnia and Rwanda and Iraq. I have returned heartened by the commitment and dedication of those armed services and the personnel we have overseas. But I continue to be troubled by the nature of the increasing deployments that we face as far as the Department of Defense is concerned.

Specifically, this bill contains a supplemental appropriation of $299.3 million to address some of the shortfalls that have been created by the deployments in Europe, Africa, the Middle East, and the Caribbean. The funds are designated as "emergency," consistent with the President's request. As such, the bill does not dip into existing funds that have been requested to maintain our military strategy and to provide for the quality of life of the people of our armed services. It is a bill that I consider to be vital today.

Let me point out that we had to have this bill done today, so it could be signed and made available for tomorrow. This is because some of the funds in this bill must be obligated in this fiscal year which expires tomorrow night.

I applaud the efforts of Secretary of Defense Bill Perry, the Deputy Secretary, John Deutch, and the Comptroller, John Hamre, who have worked with us to see to it that these funds could be secured in a way that would meet these obligations now and not impair the funds that might be necessary for the next fiscal year.

This supplemental only covers the expenses incurred by the Department of Defense for the missions that I have mentioned through September 18 of this year. All of those people who urged the President to utilize our armed services in Haiti I hope will be prepared next year to fund the costs that we have incurred. We are not funding those costs in this bill. The Department of Defense is currently operating under authority that gives them the right to incur obligations in advance of appropriations for the missions in Haiti. I am not sure how many people really realize that. We are not funding those operations with this bill.

When the Congress returns—hopefully, it will be in January, but when we do return we undoubtedly will receive a supplemental request for the military operations in Haiti. Certainly, that will be in excess, according to the current estimate, of over $0.5 billion.

It will be necessary for all Members of the Congress to work with the appropriations committees to ensure that the funding that we have here for the men and women in our military, their quality of life and for the systems to support them in the event that they are called upon to defend our country, will not suffer, that the funding for their ongoing programs will not suffer by virtue of the mission that we have undertaken in Haiti.

So far this year, Mr. President, the Department of Defense has expended $1.57 billion for peacekeeping and refugee support contingencies. That does not, as I say, include Haiti.

I ask unanimous consent that I may put in the RECORD a chart that reflects the funding that I have mentioned. It has been provided by the Department of Defense to show the cost for the missions that I mentioned and the number of personnel previously or currently engaged in those deployments.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONTINGENCY COSTS IN FISCAL YEAR 1994

[Dollars in millions]

	Costs	Current U.S. military
Somalia (UNOSOM, USLO)	$406.2	[3] 0
Southwest Asia (Provide Comfort, Southern Watch, Desert Storm)	462.3	21,000
Bosnia (Deny Flight, Provide Promise, Sharp Guard, Able Sentry	266.6	6,550
Rwanda (Support Hope)	[1] 87.9	565
Haiti interdiction/migrant processing (Uphold Democracy, Sea Signal, Distant Haven)	[2] 170.6	[4] 17,700
Cuba refugee operation (Able Vigil, Able Manner, Safe Haven)	106.3	2,700
Korea readiness costs	67.3	37,000

[1] Supplemental pending.
[2] Excluding Haiti Democracy Restoration.
[3] U.S. forces peaked at 24,165 during Dec. 1992–Sep. 1994.
[4] U.S. force level change daily per OPLAN; expected to increase as the operation unfolds.

Mr. STEVENS. Mr. President, again, this includes the Haiti migrant interdiction and processing, but it does not include the military operations in Haiti.

Let me say this. I am going to be brief because I see my good friend from Arizona is waiting to speak.

Mr. President, we have all said the cold war is over and that this is peacetime. But I think that Members ought to look at this chart and see that that status is little solace to the families of the men and women in the armed services and to those men and women who have been deployed this year. This year alone, 85,000 people have been deployed off our shores.

When we were in Europe, we discussed with pilots the problems of the men and women who are flying our aircraft that are maintaining the surveillance of Iraq. They are maintaining the surveillance in no-fly zone of Bosnia. They have been involved in Somalia and in the Rwanda operation. They have been involved in increased tensions in Korea. They have been involved in terms of trying to save lives as people tried to leave Cuba and come to our country. They have been involved in the problem of the surveillance of the Haiti refugee people. They are involved literally around the world today on a day-to-day basis. Speaking as someone who flew in wartime, they are flying more time daily than we used to fly in the war. It is having its toll now.

We talked to some of the people in the Navy. There is a blockade still in Iraq and a blockade still at Bosnia. They still have people in American vessels off Somalia. We still have the involvement in the Caribbean dealing with the Cuban refugees and the Haiti people, including the support of the Haiti military operations.

Mr. President, this is not normal peacetime. It certainly is not the peacetime that I knew in my youth. This is a time now when people have to realize that being in the armed services today means to be called on day after day, month after month after month and sometimes year after year after year to be away from one's family. We cannot afford to see the support for these people dwindle because of the constant erosion of the funds that are necessary for their support. This is caused by increased contingencies that Congress does not fund. We have an increased tendency now to say, "Well, the Department of Defense just ought to absorb that money. Somehow or other it ought to find the money and it can take the pay raise out of the funds that we previously allocated to them." And to an extent we do that in this bill. We also have them absorb other increases that are brought about by changes in law.

I think it is fortunate that we have people who are involved today in oversight of our military forces who have served in the armed services during wartime. But that time is going to disappear soon. There are not many of us left really. I am worried about the future of the men and women of our armed services if Members of Congress do not get out and find out what is happening to them: do not go on these trips that some people called junkets; and do not take the trips and go visit the Americans that we have deployed abroad because of some special interest of the United States in another part of the world. It is necessary, in my opinion, for more Members of Congress to take it upon themselves to go visit the sons and daughters of our constituents that are serving abroad. I am highly critical of those who call those trips

junkets. They ought to come along sometime and see what goes on on those junkets.

But the thing that bothers me most, as I have returned now from this last visit, is this continued report about the fatigue of our men and women who are involved in these blockades and flying these constant day after day routine missions, and the fatigue of those who are providing for their support. They are also flying long resupply missions, flying them into everywhere, from Rwanda to Somalia to Italy, to Turkey, into the support for the Bosnian people. It seems to me that we owe a lot more to these men and women that are going out there on these routine missions than any of us realize.

I want to close, as I started, by thanking the chairman for his kind consideration to the many requests that I have made for special items that concern Members of the Senate on this side of the aisle. I can assure my colleagues that this bill has been cleared by all concerned. We have had every request that was made by any Member of the Senate considered by both Senator INOUYE and me and by our staff. We have given favorable consideration to everyone we could and we have tried to work out the problems for every State so that this bill could be fair in the allocation of moneys that we have available to run the Department of Defense for the next fiscal year.

I had the occasion to be chairman of this subcommittee at one time. I know that the Members of the House committee who worked with us feel as I do—that we have not only some great staff members but we have members of the staff of the House Subcommittee on Appropriations who have been working with us.

I want to mention specifically the retirement of two of the members of the House staff and want them to know that we will miss them. Mr. Don Richbourg has served as clerk to three different chairmen of the Defense Appropriations Subcommittee. It is a tribute to his professionalism. Also, Mr. Dave Willson is the senior member of the professional staff of the Defense Subcommittee on the House side. He has worked tirelessly over the years that we have worked with them to protect the readiness of our Armed Forces. I wish to state here that I think every Member of the Senate who has worked with the House Defense Appropriations Subcommittee and who has come to know these two gentlemen respect them and wish them and their families all the best in the future.

Mr. President, I too have been very fortunate to have the assistance of my good friend, Steve Cortese, and the assistance, provided by the Department of Defense, of Sid Ashworth who has worked with me, as well as Dona Pate and Jim Morhard of our staff.

I do not know. I am sort of stepping on a feathered pillow. But I heard my good friend from Hawaii give such great commendation to our good friend, Richard, that I do not know whether this is a swan song for Richard or just the praise that he deserves. I am going to take it to be the latter, Mr. President, and say that I too appreciate working with the majority staff. I think we have the best subcommittee in the Congress in terms of the attitude of our people. We all work for the same goal without regard to who is chairman. It has been probably the most nonpartisan and professional group that I have worked with in my service in the Senate.

It is a privilege to be once again here on the floor to present this bill that I commend to the Senate for its approval.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized for up to 15 minutes.

Mr. MCCAIN. Mr. President, the events of the last few days and weeks have again indicated that we have gone from the very dangerous, yet very predictable, world of the post-cold-war era to a still dangerous and much less predictable world. We now find 15,000 to 20,000 American troops in Haiti.

The talks with North Korea are approaching an apparent impasse. NATO air strikes and a renewed siege of Sarajevo indicate an unraveling situation in Bosnia. The effects of Islamic fundamentalism are being felt in Egypt, Algeria, Malaysia, Indonesia, and countries throughout the world. While any objective observer can see many situations in which the United States may have to become militarily involved, what we see today is a continued decline in the defense budget.

The defense budget has declined by nearly 35 percent in constant dollars since 1985, with another 10 percent reduction planned by 1999. Mr. President, I am convinced that if we continue this decline, it will result in a hollow military force which is unready to fight and win in future conflicts.

I would like to point out that the size of the defense budget begins with the submission of the President's budget, and its review by Congress. Then, as my colleagues know, the appropriations are divided up amongst various types of requirements, such as those of the Defense Appropriations Committee. As an example of the failure of the Senate and the Congress to appreciate the importance of defense spending, the fiscal year 1995 budget resolution this year cut $500 million in outlays from the overall discretionary spending account. It cut $42 billion over 5 years, all of which was taken from the defense bills and the appropriations allocations to defense. Now, the entire $500 million cut did not have to be taken from defense. This was a conscious decision on the part of the Appropriations Committee.

To compound the problem, the Appropriations Committee cut the allocation for the Defense Subcommittee and increased the allocation to the Military Construction Subcommittee by $490 million. This effectively made a billion-dollar cut in the President's request before we began the formal review of the defense program. Then, once we began to alter the budget request, we indulged in a process which resulted in many billions of dollars being taken out of the defense budget request and being reallocated to areas which have nothing to do with defense.

In fact, the Congressional Research Service recently prepared a study of the costs of nondefense activities funded in the defense budget during the 6-year period of 1990 through 1995. The results are astonishing: A total $52 billion was spent on nondefense programs out of the defense budget over the past 6 years. As has been pointed out by my friends from Hawaii and Alaska, we are taking further funds out of the defense budget for our peacekeeping obligations in Somalia, in Bosnia, or in Iraq, and now in Haiti. Our commitment in Haiti has cost well over $300 million since we began to enforce sanctions and prepare for an invasion. Some estimate it will probably exceed $2 billion before we are finished, and $850 million in the short term.

These expenditures are all coming from a defense budget which has been cut already 35 percent since 1985, and which has another 10 percent reduction planned for the future. The effect of such efforts is then dramatically exacerbated by the incredible ways we find to spend American tax dollars. Let me give you one example from the current bill, Mr. President. Let me quote from the portion of the bill called "Job Creation/Retention":

> The conferees strongly encourage the Department to make job creation and retention a selection criterion as a condition of the TRP award process—

That is the Technology Reinvestment Program.

> to make unions explicitly and directly eligible to apply for funds; and also to include union representatives among the list of eligible applicants for Technology Reinvestment Program grants in the next round of proposals.

I ask my friend from Hawaii, why not include the Sierra Club? Should they be in this? They are about as qualified as the unions. What about the Boy Scouts? Should we include the Boy Scouts? I think they are probably more qualified.

The bill then goes on to say:

> Other conversion initiatives. The conferees suggest that the Defense Department consider funding the following conversion projects during the course of fiscal year 1995:

Some of the suggested recipients are: Berkshire County Regional Employment Board; Hunters Point Civilian Job Training in Environmental Remediation; Domestic Fuel Cell Manufacturing; Great Lakes Environmental

Manufacturing Technology Center; Methanol Plantship Technology; Georgia Tech Plasma Arc Remediation; Great Lakes Environmental Manufacturing Technology Center; Torque Converter Project, and Michigan State University.

We have found out over the years, Mr. President, what the effect of these suggestions is. They happen. These suggestions get the money, Mr. President. So what we are doing, in addition to the earmarking that is already in the bill, is earmarking even more money away from real defense needs. Further, there are additional expenditures in this conference report which were not in either the House or Senate bill: $1 million for a police research institute; and $1 million for the southwest Oregon narcotics task force are just a few examples.

Meanwhile our military leaders are warning us about readiness. As you may know, I did a report last year called "Going Hollow," which analyzed the erosion of our readiness using the views of the heads of each of our military services. I went back this year and asked our chiefs similar questions about their state of readiness and their views of the future capabilities. Their responses are an even firmer warning. Let me give you a few quotes:

The Chief of Staff of the Army said:

Although still trained and ready, the Army is now at the lower edge of the band * * * at the razor's edge.

This [FY95] budget represents the minimum resources required to maintain the unmatched superiority your Army enjoys today. Any reduction in this budget request would jeopardize that assured superiority. However, this budget request will not pull us away from the razor's edge of readiness.

Infrastructure/Facilities [are] still underfunded * * *. Quality of life [is] still underfunded * * *.

* * * The "average" soldier * * * spends approximately 138 days each year away from home. * * * The situation will not improve.

Retention rates are expected to decline this year. * * * The major factor is the perception that an Army career may not provide a secure future in the present environment.

The Navy says:

The major problems the Department of Navy faces in terms of readiness are the increasing risks we are having to face in order to maintain adequate readiness levels * * * [including] increased readiness costs due to unforeseen contingency operations.

Readiness levels have declined slightly from their peaks in the mid-1980s. * * * Programmed readiness levels nonetheless involve risk. These risks include * * * depot maintenance backlogs * * * reduction in afloat inventories.

We are experiencing difficulty in maintaining unit integrity throughout full workup cycles for deploying units as we use force shaping tools * * * to decrease end strength.

The Marines said:

Ongoing [budget] reductions, coupled with contingencies, have created a situation where existing assets are insufficient to support major operations plans simultaneously executed in separate theaters.

* * * The fundamental truth is, readiness is directly proportionate to funding. Our analysis of Marine Corps requirements in the current years is that the Corps has inadequate resources to maintain the level of readiness expected by the Congress. * * *

All of the responses by our chiefs of staff are basically the same, Mr. President—problems and shortfalls in sustainability, readiness and morale, and the list of examples goes on and on. All of our service chiefs, whom we entrust with the responsibility for evaluating our military capability, are saying that we are treading on dangerous ground.

The Chief of Staff of the Air Force says:

Over the last 7 years we have had a fourfold increase in deployment obligations, as we have been drawing down the Air Force by nearly one-third to meet Congressionally-mandated end strength requirements.

* * * We've seen a subtle rise in overall cannibalization * * * rates.

We ought to pay attention, Mr. President, to what our military chiefs are saying. The fact is that we are already in a very serious situation, and we have major further budget problems to come. This is best illustrated by a recent GAO report saying the Department of Defense may be underfunded by about $150 billion. GAO cites such shortfalls as the failure to budget for inflation, overstated projected management savings, underfunded potential cost increases for base closures, et cetera.

The Department of Defense admits some of the problems exist. In a recent letter in response to the GAO report, Comptroller John Hamre, a man that all of us respect and admire, noted that "we do have a problem ranging from $26 billion to as much as $40 billion because of inflation and congressionally directed pay raises." Mr. Hamre also noted that the Department of Defense has not fully addressed these recognized funding shortfalls, leaving "a $20 billion adjustment to be made in future years."

These funding problems impact on more than readiness. Just last month, Deputy Secretary of Defense John Deutch published a memo written to the military services which directed that the services explore the idea of terminating the major procurement programs in their budgets. The memorandum directed the services to propose terminating such key projects as the Comanche helicopter and the Advanced Field Artillery System of the Army, deferring the F–22 and TSSAM programs of the Air Force, cancelling the V–22 and new attack submarines, and on and on.

The Assistant Deputy Secretary of Defense John Deutch is saying we may have to cancel virtually every new weapons system that the services are seeking. We all remember that in the 1970's, we spent money on new weapons systems but we allowed our military personnel situation, readiness, and sustainability to degenerate and deteriorate to the point where we had the most deplorable of conditions. This was exemplified by the failed rescue effort of the Iranian hostages. Now, we have gone to the other extreme. We are putting our few available funds into readiness and we are on the edge of terminating the kind of modernization and advance technology that gave us one of our greatest victories: Operation Desert Storm.

Mr. President, we now have a Hobson's choice between inadequate readiness and inadequate modernization and technology, and it seems to me one only answer is to do what the President of the United States said at his State of the Union Message last year when he said, "Do not let Congress cut defense any more." Those were his words.

This will not be enough to deal with the problem. First of all, I would like to see the President come over with a much larger proposal in his budget for defense. Instead of threatening to eliminate every major modernization program which will ensure technological supremacy in the future, the President, in my view, should allocate additional resources to the defense budget to make up for these shortfalls. And second of all, I have not heard the President say one additional word about defense spending since he said it that night before a joint session of the Congress. I would like to hear him repeat this statement and I would like to support him in that effort.

At the same time, I would like to see the Congress use the defense budget for defense. Mr. President, I talk often about nondefense spending in the defense budget. What Congress does is really mind-boggling at times. I will not belabor the resulting problems. I discussed them the last time this bill was up in the form of the appropriations bill before it went to conference.

But, there are some examples which in this bill are very hard to understand.

A national center for toxicological research in Jefferson, AR. Mr. President, you know what would happen if you asked any member of the military if they need a pay raise or more money in their weapons system or do they need $5.8 million for a national center for toxicological research in Jefferson, AR.

A remediation effort at Cordove, AK.

A total of $1 million earmarked for Derector Shipyard environmental remediation. Finally, $5 million to Charleston Naval Hospital to establish a coastal cancer control program.

The fact is that what we do when we take hard-earned American tax dollars and use them on such projects, is to use them wastefully, or on low priority projects.

We also seem to have found a new name for pork called defense conversion. We now justify one local or parochial project after another to preserve what is called a defense industrial base. We now have a defense industrial base argument for bombers. We now have a defense industrial base argument for MRE's, meals ready to eat. We now have a defense industrial base argument for combat boots. We now have a defense industrial base argument for submarine reactors. You name it, Mr. President, we have a defense industrial base argument to fund it.

I think this kind of waste is outrageous. When we are cutting the defense budget so dramatically, we cannot maintain a defense industrial base for everything that has to do with the military. We need the Department of Defense to come forward with a set of criteria and clearly defined spending priorities—in fact, I met with some of their people this morning—which we can use to judge where a defense industrial base is really needed and where capabilities are not needed or may be nice to have but are not needed.

Mr. President, several times in this century we have found this Nation in a military crisis, and without the ability to cope with it, because of the mistakes the Congress and the President of the United States made in reducing our defense capability to such a degree that we could not defend this Nation's vital national security interests. Fortunately, in those prior times we were separated from Europe by a large body of water. The nature of technology and warfare gave us time to catch up and prevail.

Mr. President, I worry about the next time there is a severe national crisis which requires us to react strongly with a capable, well-manned military establishment, and I am afraid we are dramatically eroding the capabilities we need, and we have to act very soon to reverse current trends if we are not to be too late.

Mr. President, I appreciate the indulgence of my colleagues, and I thank the Senator from Hawaii and the Senator from Alaska for their usual outstanding job.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for a period of up to 15 minutes.

Mr. BUMPERS. Mr. President, first, I want to pay tribute to my chairman of the subcommittee. Senator INOUYE and I have differences on different weapons systems. We have differences on a lot of things. But I want to say he is eminently fair, unfailingly polite, and extremely conscientious about the status of our defense forces. So what I have to say today is certainly not intended as a denigration of my very good friend of 20 years, Senator INOUYE. I want to express some of my own personal thoughts.

First of all, I am constantly chagrined by the fact that we start a weapons system such as the B–1 bomber to penetrate the Soviet Union and then we make a conventional bomber out of it in order to have a rationale for building the B–2 bomber. We started the Milstar communications system in 1981 as a communications satellite system to communicate during a 6-month nuclear war. If you have a nuclear exchange with Russia, there is not going to be anybody left to communicate with. Everybody is going to be vaporized. That never made any sense.

So now the Defense Department says, well, we no longer need it to fight a nuclear war; we need it for conventional warfare such as Desert Storm even though it would handle only a minuscule portion of the communications traffic that the Defense Department would use during a war such as Desert Storm. And the costs are just staggering, staggering. Everybody knows that I tried this year to kill that program and got, I think, maybe 44 votes. I was shocked that I got 44 votes to terminate that program. But it is never quite enough.

Mr. President, the Defense Department admits that they are going to be $40 billion short over the next 5 years. In other words, they have programed the policies of the Defense Department, including procurement, and they will admit that they are $40 billion short to carry out their plan.

But do you know what the General Accounting Office is saying? The General Accounting Office says they are $150 billion short. And until this very moment the Defense Department has not told me, and I very strongly suspect they have not told the chairman of our subcommittee, where they are going to find that kind of money. We are trying to get the deficit down. This Congress, if GAO is right, is not going to be in any mood to increase defense spending by $30 billion a year. We could not do it if we wanted to. And yet the Defense Department has yet to tell us what they propose to do about this $150 billion shortfall.

The day before yesterday, I talked about the Republicans' Snake Oil Convention, NEWT GINGRICH stood on the Capitol steps saying, "Here is what we will do to the American people." And in a sense saying, if there is somebody out there that wants something that we did not include, let us know and we will give you that, too.

And how are the Republicans going to pay for it? They will add $300 billion to $400 billion on the deficit, and how are they going to pay for it? Well, they are going to put a little clause in the Constitution saying we must have a balanced budget.

What else do they say? That whatever it takes to pay for these tax cuts for the wealthiest people in America at the expense of education, health care, you name it, whatever it takes to pay for it, will come out of domestic spending, and $19 billion of it out of Medicaid and Medicare. The first thing you know, we are going to cut Medicare so much the doctors are going to have to pay people to come into the office; $200 billion in program cuts so the Republicans can take care of the wealthy.

But they say of all that roughly $400 billion in tax cuts, none of it—none of it—can come out of defense spending. It must all come out of domestic discretionary spending and entitlements. The things that we spend money for to make ourselves a civilized nation. They would cut domestic discretionary spending still further, almost in half from what it was 10 years ago.

Yesterday, I did a television interview and the interviewer asked me:

> Do you think we are headed for a hollow force? Do you think our defenses are going to become a hollow force when you consider all of our cuts?

I said:

> Well, I will say one thing. If we become a hollow military force while we are spending more money on defense than all the rest of the world combined

Let me repeat that, Mr. President—

> If we become a hollow force while we are spending more money than the rest of the world combined, twice as much as our 10 most likely adversaries, including Russia, China, Iraq, Iran, North Korea, we deserve it, because it means we will have presided over the most seriously mismanaged defense spending in the history of the world.

I do not say that to be dramatic. I simply say that to say, how on Earth could anybody conceive of us being a hollow force when we are spending between $250 and $275 billion a year on defense, more than the rest of the world combined?

Mr. President, I used to be a great champion of the C–17. As a matter of fact, we have a plant up in the Ozark Mountains that makes doors for McDonnell Douglas. It is not easy for me to oppose the C–17, considering the fact that Douglas has a good plant in my State. But $450 million for one C–17, which is about twice to three times what it started out to be, when we could have bought modified Boeing 747's for one-third that amount and gotten 80 percent of the capability we get out of the C–17.

The *Seawolf*. I confess before all the world that I voted for the last *Seawolf*, and I have regretted it ever since. Why are we going ahead building another *Seawolf*—there is no money in this bill for it, but next year there will be—and the last *Los Angeles* class attack submarine was launched just last week. Those submarines have a 30-year life. But we are soon going to retire some that are half that. You think of that.

The F–22 fighter plane. Who could be opposed to such a sophisticated aircraft as the F–22? And yet, Mr. President, GAO said we could save billions by delaying for 4–7 years the building

of that airplane, which is going to cost right now $130 million each—$130 million for one fighter plane. And the F–15 is superior to any other interceptor in the world and will be for 15 more years.

Oh, yes, the good is the enemy of the best. No matter how good something is, the Defense Department can conjure up something that will be better that we have to have. And all of the sudden that weapons system that used to be the best, all of the sudden it is the enemy of the best. We even sell some of our most sophisticated weapons to other nations and then the Defense Department comes over here and says, "Look at all these sophisticated weapons the rest of the world have. We have to build something new to overcome that," when we sold it to them in the first place.

And I personally do not believe we need 12 aircraft carriers; 10 would be more than adequate. They cost $3.2 billion in today's dollars. And that does not include the cost of the planes on that aircraft carrier.

Mr. President, last—and again I would not presume to speak for the chairman of the committee, but I believe he is relatively sympathetic to an issue that I raised in the conference, and here it is.

Under the START II Treaty, which we must implement by the year 2003—and which Yeltsin and Clinton both yesterday said they want to hurry up, speed it up, do it before 2003—we are allowed 1,750 warheads in submarines.

Now today, we are planning on having 18 Trident submarines by 1998. Each Trident submarine carries 24 missiles. Each missile has eight warheads. That means that to come into compliance with the START II Treaty, Mr. President, we have to do either of two things: We have to either download those missiles from 8 warheads per missile to 4 warheads per missile, which would come out to about 1,750, the permissible number; or put 12 missiles on each submarine instead of 24. They cost about $40 million each. Put 12 on a submarine with their existing 8 warheads, and that will bring you in compliance.

I thought that made a lot of sense, but the Defense Department was not having any of that. That saves billions, incidentally; billions. It does not reduce our strategic capability one whit. But they are not having any of that.

And do you know why? Because they want to keep the D–5 missile production line open.

As long as the Soviet Union existed, we could use the cold war and the Soviet Union as the threat that kept us building these things. Today, we do not talk about the threat. We talk about our industrial base.

If you shut down the D–5 missile line, what will the Brits do? They want to buy some more D–5 missiles. Well, who are we to be protecting Britain in the purchase of D–5 missiles?

Three months ago, Mr. President, 3 months ago, the Navy said we will settle for 347 D–5 missiles. I wanted to have 10 less than that, but I said, "That's fine. We will go with 347." That will equip all of the 10 Trident submarines we have in the Atlantic. We also have eight Tridents in the Pacific. But they carry the C–4 missile.

All of a sudden, between the time we passed the bill here and went to conference, the Pentagon came out with a new nuclear posture review and now the Navy says, "No, we don't want 347. We want 425." It is only $3.4 billion more.

"What are you going to do with them?"

"We have decided we want four of our submarines in the Pacific to have the D–5 missile."

Everybody knows those submarines are now equipped with what we call the C–4 missile. It is a magnificent missile. It will last as long as the submarines will last. It lacks 450 feet being as accurate after a 4,000- or 5,000-mile trip as the D–5; less than half the distance of where I am standing to my office. That is how much accuracy you lose with a C–4 as opposed to the D–5. And there is not going to be anything alive within 50 miles of where it hits, anyway.

Mr. President, $3.4 billion to backfit four of those submarines and take off a perfectly good C–4 missile and put D–5's on. I can tell you categorically one of the reasons for this is not because it enhances our nuclear superiority or our nuclear posture. It is to keep the industrial base of the D–5 missile. Keep the line open. It does not make sense—any other argument you want to put on it makes no sense whatever. Yet, when I brought this up in the conference, the House was having none of that.

I said, "How do you answer this question?" The Defense Department did a study, which they completed November 9, 1992, less than 2 years ago, on this very subject: "Shall we backfit the Trident submarines in the Pacific Ocean?" And they came back and the results of the study were: No. The Defense Department, DOD, said, "No, we are not going to retrofit those submarines. The C–4 missile is fine. It will last as long as our submarines will."

Do you know what the Navy did? They went off in a corner and pouted and then they came back and said, "We want them anyway."

The PRESIDING OFFICER. The time of the Senator from Arkansas has expired.

Mr. BUMPERS. Mr. President, I ask unanimous consent for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, do you know what happened? The downpayment for those extra 88 missiles is in this bill.

I have vented my spleen on things that are of great concern to me. I do not know any other way to express what I see as a continuing skewing of what I think the Defense Department's priorities ought to be. I have done everything I know to do, to point out things where they could save money. But we do not ever save money. We do not ever kill a weapons system.

I have talked about this with the Assistant Secretary of Defense, John Deutch. He was Assistant Secretary of Energy when Jimmy Carter was President—I was on the Energy Committee and Secretary Deutch and I got to know each other reasonably well. I had great confidence in him. And I pleaded with him to look at the Milstar communications system very carefully, think of the cost as opposed to the benefits you are going to get. I said please, do not buy all those MK–6 guidance systems. Please consider putting 12 missiles on each submarine with 8 warheads and save billions of dollars. And please, for god's sake, consider not backfitting those submarines in the Pacific—for nothing except spending $3.4 billion worth of the taxpayers' money.

He promised me that every one of those things were under serious review. This is not to denigrate him, but it is the same old story. Unless the Defense Department tells you they no longer want a weapon, nothing happens.

Mr. President, I am a former marine. The Marines want the V–22 Osprey worse than they want to go to Heaven. The Defense Department wanted to kill it and I voted with the Defense Department. It is still alive and kicking because of Congress. The Defense Department could not even kill that one. They did not want an additional 20 B–1 bombers, but we put $150 million in to keep the line open.

So Secretary Deutch may have reviewed them, but they all came out exactly the way I knew they would, and the way they have come out every year during the 20 years I have been in the U.S. Senate. I told the committee, in a different situation, though, this morning: These battles are kind of like me fighting with my wife. "Those I win just ain't over."

So I will be back at the same stand next year doing my very best to raise these issues to a level that the Members of the Senate will not only understand but appreciate and possibly adopt. We have been able to do a few things around here, but I am going to be anxious to hear the Defense Department testify next spring in our subcommittee about how they are going to find the $150 billion they have to find.

I would be remiss if I did not again pay respects and tribute to our distinguished chairman, who is so untiring and unstinting in his efforts to get this bill here. Those conference committees are very difficult. There is a lot of parochial interest, a lot of interest, sincere interest—I do not question anybody's sincerity about any weapons

system. But there obviously is a lot of parochialism, and I am not above it myself when it comes to something for my State. But I tell you, we must start to do something about the billions of dollars we are prepared to waste on some of these weapons systems.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

WILLIAM LANGER JEWEL BEARING PLANT

Mr. INOUYE. Mr. President, the conferees agreed to eliminate Senate bill language—amendment No. 56—providing $2,500,000 only for "capital investment, operations, and such other expenditures as may be necessary to maintain the William Langer Plant as a going concern while it is being excessed under the provisions of the Federal Property and Administrative Services Act." The conferees felt that bill language was unnecessary to carry out the Senate's direction and therefore agreed to provide the $2,500,000 required for this effort within the statement of the managers in the "Missile Procurement, Air Force" account. The conferees specifically provided an additional $2,500,000 within the Industrial Facilities line—page 1 line 10—only to carry out the Senate's directions as explained in Senate Report 103-321, page 129. It was further the intent of the conferees that the Air Force transfer the funds provided for the Langer Plant to the manager of the National Defense Stockpile for execution.

DFAS CENTER FOR FINANCIAL MANAGEMENT EDUCATION AND TRAINING

Mr. President, before we conclude our business on the fiscal year 1995 Defense Appropriations Act, I want to bring to the attention of my colleagues a matter of importance that was not addressed in the conference report on this act. This matter concerns the establishment of the Defense Finance and Accounting Service's Center for Financial Management Education and Training in Southbridge, MA.

On May 9 of this year, the Department of Defense announced plans to establish the DFAS Financial Management Education and Training Center at Southbridge as part of its overall plan to consolidate DOD financial and accounting operations. The purpose of this facility is to support the planned consolidation and continued operation of DFAS accounting centers.

As determined by the Department during its review of DOD financial management operations, this new education and training center will be needed to assure the success of the envisioned consolidation. Though no funds were included in the President's 1995 defense budget request to initiate the establishment of this center, the Department has determined that it needs to move quickly to do so. Unfortunately, this budget inadequacy was brought to the conferees' attention very late in our deliberations, limiting our ability to fully address this issue.

Nonetheless, I can unequivocally state my full support for this vital project and that of my House counterpart. We believe the Department should move expeditiously to establish the Southbridge education and training center, using funds available to the Defense Finance and Accounting Service. Should any additional legislation be required to facilitate the establishment of this center, I can assure my colleagues that I will work to secure its prompt passage.

B-2 BOMBER CONVENTIONAL CAPABILITIES

Mr. President, this conference report represents an important step toward maintaining and enhancing the Nation's conventional bomber forces, especially the B-2 advanced technology stealth bomber. Contrary to assertions by some, the B-2 bomber can justifiably lay claim to being the foundation of our long-range, conventional, air power projection capabilities. No other aircraft embodies its unique combination of high survivability, long range, and large payload.

This conference report includes funds to maintain and improve all our bomber forces—the still useful B-52 bombers, the ailing B-1B bombers, and the superlative B-2 aircraft. Most noteworthy is the recommended appropriation of $125 million to protect the nation's B-2 production base and ensure that the option of producing additional B-2 aircraft remains viable for at least 1 more year.

Also noteworthy is the initiative to provide $25 million to support the acquisition for the B-2 of a limited stockpile of near precision conventional bombs, known as Global Positioning System [GPS]—Aided Munitions [GAMS]. In association with the GPS-aided targeting system, these weapons provide an early and accurate bombing capability for the B-2. They are a bridge to, not a substitute for, the Joint Direct Attack Munitions still being developed by the Air Force.

Mr. President, it is the conferees expectation that the Air Force will implement an acquisition strategy which provides an operational GAM capability as early as practicable and prudent—from the taxpayers' perspective of minimizing costs and the Air Force's perspective of improving our combat capabilities.

Mr. President, the conference agreement provides $243.6 billion for DOD. Together with military construction and nuclear energy programs, the amount appropriated for all national defense programs for fiscal year 1995 is $261.9 billion.

This amount, for total national defense, is $1.4 billion below the amount contained in the Defense Authorization Act in new budget authority. In outlays, the appropriations bills save $700 million from the authorized level.

But the Defense appropriations bill does not cut readiness. The Appropriations conference report provides more money for each military service and reserve component for critical readiness money than was authorized. The increases, above authorization, are as follows:

[In millions]

Army	+$271
Navy	+189
Marines	+2
Air Force	+116
Army Reserves	+5
Navy Reserves	+4
Marines Reserve	+1
A.F. Reserves	+7
Army Guard	+42
Air Guard	+1
Total	+638

Mr. President, in addition, the conference agreement provides $299.3 million in supplemental appropriations for fiscal year 1994 to replenish readiness funds used for operations in Rwanda and refugee assistance in Guantanamo Bay.

The bill cuts some modernization programs to allow for funding the increases in readiness. The conferees chose to protect readiness above the levels authorized at the expense of some investment programs. However, the majority of cuts made in investment programs were made because of programmatic delays or other fact of life changes that are already recognized by DOD.

Mr. President, the appropriators protected readiness. Of that, there can be no question.

THE FISCAL YEAR 1995 DEFENSE APPROPRIATIONS BILL

Mr. DOMENICI. Mr. President, I rise in support of H.R. 4650, the fiscal year 1995 defense appropriations conference report.

The conference report provides a total of $243.6 billion in budget authority and $164.2 billion in new outlays for programs of the Department of Defense for fiscal year 1995.

When outlays from prior-year budget authority and other completed actions are taken into account, the conference report totals $243.6 billion in budget authority and $250.7 billion in outlays for fiscal year 1995. The bill is $2 million in budget authority and $52 million in outlays below the subcommittee's 602(b) allocation.

I want to thank the conferees for the support they have given for the Defense Department's counterproliferation initiative. The conferees provide $60 million for this important effort.

These funds will serve to "jump start" the administration's multiyear plan to deter the spread of nuclear, biological, and chemical weapons.

Proliferation of such weapons may well be the most important threat to national and international security in the post-cold war era. The counterproliferation initiative will focus on deterring, detecting, protecting

against, and responding to the threat posed by such weapons.

I also want to express my appreciation to the conferees for their support for several priority items important to the military presence in my home State of New Mexico.

Finally, I commend the distinguished conferees for bringing this bill to the floor within the subcommittee's section 602(b) allocation. As a member of the Senate defense appropriations subcommittee, I know how difficult a job it has been to sustain readiness in the face of ongoing, significant budget reductions.

I thank the conferees for the fine job they have done, and I urge all Senators to support the conference report.

HEAVY EQUIPMENT TRANSPORTER

Mr. BOND. Mr. President, I would like to raise one issue that was, I believe, inadvertently left out of the conference report. As we did last year, the conference committee left to the leaders of the Guard and Reserve the right to prioritize and buy their own equipment. Rather than earmarking funds for specific items, the committee instead provided a list of items that should be given priority consideration. That list was supposed to include the heavy equipment transporter [HET] for the Army Guard and Reserve, however, the HET was inadvertently left out of the final report.

I would ask of the chairman and ranking member of the subcommittee that they address this issue and, specifically, confirm that the HET was one of the programs that was intended to be highlighted.

Mr. INOUYE. Mr. President, I thank the Senator from Missouri for raising this issue. He is, in fact, correct that due to a printing error, the heavy equipment transporter was not included in the list of programs which the conference committee highlighted to the Guard and Reserve for priority. The HET System is an important one which addresses important logistics needs of the Army, and I will be sure that the leadership of both the Army Guard and Army Reserve are aware that we intended to include it in the conference report.

Mr. STEVENS. Mr. President, I would concur with the statement of the chairman. The conference committee intended to include the HET in the conference report, and we will ensure that the Guard and Reserve are aware of that.

Mr. BOND. I thank the chairman and ranking member for that clarification, and also for their continued strong support of the National Guard. As cochairman of the Senate National Guard caucus, I can say that the Guard has no stronger friends in this body than these two Senators.

With regard to the HET Program, I would just like to highlight the importance of this program. In hearings held earlier this year, members of the subcommittee heard from National Guard witnesses concerning their equipment shortfall. Specifically, we were told that the Guard is facing a severe shortfall of the most modern heavy equipment transporter [HET], the M1090 tractor and the M1000 trailer.

In Operation Desert Storm, modern and capable heavy equipment transporters were in short supply. When Gen. Norman Schwarzkopf briefed the subcommittee following his return to the United States, he cited HET as an item that should be a priority for both the Active and Reserve Forces. Unfortunately, the active Army faces a shortfall and, according to testimony, they will attempt to buy additional units if funding is available. The Army, however, has said it will not buy additional HET's for the Guard or Reserve out of its procurement funds. These HET's remain a priority for the Guard and for the Reserve, and it is my understanding that they plan to use some of the funding in this bill to purchase additional systems. I believe that makes a lot of sense, I am supportive of it, and I hope that they follow through on its plan to buy more HET's.

Mr. LEVIN. Mr. President, I want to commend the chairman of the Defense Appropriations Subcommittee for his excellent and successful effort in defending the Senate position with respect to funding for the Defense Contract Audit Agency [DCAA] and the Defense Contract Management Command [DCMC]. When this bill was considered by the Senate earlier this year, I had intended to offer an amendment to put the Senate on record in support of full funding for these two agencies. I withdrew that amendment when the chairman assured me that he would fight hard in conference for full funding and in no event would support a cut greater than the $36,500,000 for DCMC contained in the Senate bill. As I knew he would, the chairman kept his word and this conference report contains only this $36,500,000 cut for DCMC.

I do have one point I would like to make on this part of the conference agreement, Mr. President. And it concerns the statement of managers. The statement of managers reflects concern by the conferees that DCAA and DCMC achieve savings over the next few years by consolidating and streamlining. I take no issue with that recommendation. However the statement of managers also recommends that DCAA "reduce its incurred cost audit backlog to 1 year by 1997." I think that is an important goal and one that DCAA should try to meet. However, I think we should also recognize that DCAA needs some assistance from the contractors and DOD in order to reduce this backlog. DCAA needs the contractors to submit their incurred cost claims in a timely fashion, and DCAA needs the Department to provide DCAA with appropriate staffing.

There is a contractual requirement that each contractor submit incurred cost claims to the Government 90 days after the contractor's fiscal year ends. I have been advised that approximately 65 percent of contractors take 6 months or longer to submit incurred cost claims to the Government. DCAA cannot start the audit until it has the contractor's claim. Clearly, the timeliness of contractor incurred cost claims must improve in order for DCAA to reduce the incurred backlog to 1 year.

Mr. INOUYE. Mr. President, if the Senator from Michigan would yield.

Mr. LEVIN. I would be happy to yield to the senior Senator from Hawaii.

Mr. INOUYE. I agree with what the Senator from Michigan has said. The 1997 goal for reducing the backlog is an achievable goal, only with the cooperation of both the Department of Defense and the contracting community. I appreciate the Senator's remarks and his longstanding support of the work of these two agencies.

SENATE AMENDMENT NO. 24 TO H.R. 4650

Mr. INOUYE. Mr. President, I would like to clarify a matter that has arisen with regard to Senate amendment 24 to H.R. 4650, which provided $8 million for upgrades to the Air Force CAMS/REMIS System. This is the major Air Force data management system to provide maintenance technicians with up-to-date information on the maintenance and supply status of missiles, aircraft and other critical operation equipment.

During deliberations with House conferees on the fiscal year 1995 Department of Defense Appropriations Act, the Senate conferees receded to the House on amendment 24, but added funds to the Air Force Operation and Maintenance account for CAMS/REMIS, as identified in the table for this account in the accompanying statement of the managers to this conference report. This table confirms the decision of the conferees to provide $8 million only for the CAMS/REMIS upgrades. Inadvertently, additional explanatory language for the statement of the managers was not included in the final version. There should be no question that the $8 million identified in the operation and maintenance account for CAMS/REMIS is to be available only for upgrades to this system. These funds are in addition to any other funds included in the Air Force budget for the normal operation of CAMS/REMIS.

Mr. STEVENS. Mr. President, I fully concur with the statement made by the distinguished chairman. The $8 million appearing in the operation and maintenance account table for the Air Force in the statement of the managers may be used only for upgrades to the CAMS/REMIS System.

NATIONAL DEFENSE SEALIFT FEATURES

Mr. MITCHELL. Mr. President, I would like to engage the Senator from

Hawaii, chairman of the Subcommittee on Defense, in a brief colloquy regarding a program of significance to national defense. Mr. President, I am concerned that the conference agreement does not appear to provide funding for the National Defense Sealift Features Program. Can the manager of the bill explain the conferees action on this program?

Mr. INOUYE. Mr. President let me respond to the majority leader's request. As you will recall, the authorization conference included $43 million for the National Defense Sealift Features Program, as an alternative to expansion of the inactive Ready Reserve Force. The Senate-passed appropriation bill also funded the National Defense Features Program at $43 million. The House-passed appropriation bill, however, provided no funds to begin this program in fiscal year 1995. In the final analysis, the conferees on the defense appropriation bill were unable to identify sufficient funds for the National Defense Features Program.

Mr. MITCHELL. I thank the Senator for that explanation. Would it be correct to say that the conferees are in favor of the program, but simply did not have the money to pay for it at this time?

Mr. INOUYE. The majority leader is correct. The conferees support the program and encourage the Defense Department to include funding in the fiscal year 1996 budget request for the National Defense Sealift Features Program. Furthermore, because the authorization conference agreement authorizes funds for the program in 1995, I believe the conferees on the defense appropriation bill would support DOD efforts to initiate the program in 1995 through a reprogramming.

Mr. MITCHELL. I thank the chairman of the subcommittee for explaining this matter to the Senate. Would it be correct to summarize the manager's view that the conferees support the National Defense Sealift Features Program, hope it will be included in the DOD budget for fiscal year 1996, and would be supportive of efforts to reprogram $43 million to begin the program in fiscal year 1995?

Mr. INOUYE. The majority leader has expressed it correctly.

Mr. COHEN. Mr. President, I appreciate the comments from the Senator from Hawaii, chairman of the Appropriations Subcommittee on Defense, in support of the National Defense Sealift Features Program. As the Senator from Hawaii noted, the fiscal year 1995 National Defense Authorization Act contains $43 million in initial funding of the National Defense Sealift Features Program—for which Congress provided specific statutory authority in the fiscal year 1993 National Defense Authorization Act.

I also appreciate the fact that the Senator from Hawaii has encouraged the Defense Department to include funding for the National Defense Sealift Features Program in the fiscal year 1996 budget request, and to consider a fiscal year 1995 reprogramming for this purpose. The National Defense Sealift Features Program offers a cost-effective dual-use solution to the need for supplemental defense sealift assets in time of international crisis. It can also assist the preservation of defense-critical American shipyards, U.S.-flag merchant ships, and the jobs and vital skills of American shipyard workers and merchant mariners.

Mr. President, the Senator from Alaska, ranking minority member of the Appropriations Subcommittee on Defense, has expressed interest in joining this colloquy. I thank him for his supportive remarks to the Senate on the National Defense Sealift Features Program.

Mr. STEVENS. Mr. President, let me join the Senator from Hawaii, chairman of the Appropriations Subcommittee on Defense, in confirming to our colleagues from the State of Maine that I fully support the National Defense Sealift Features Program and its funding.

LHD–7 AMPHIBIOUS ASSAULT SHIP

Mr. COCHRAN. Mr. President, I am pleased to note the $50 million in funding for the LHD–7 amphibious assault ship in this conference report, as well as bill language directing the Secretary of the Navy to extend the option on the ship for not less than 1 year. The conferees have unambiguously endorsed this ship, and it is my understanding that the LHD–7 will be a priority in next year's Defense appropriations bill.

Mr. STEVENS. Mr. President, the amount of budget authority available this year was severely limited. That we were able to put even $50 million into the ship is testament to the strong support for LHD–7. It will be a high priority next year, and it is my intention to seek to fully fund the ship, even if it is not included in the administration's budget request for fiscal year 1996. The requirement for the ship is clear-cut, and by acting next year to complete the funding for the ship we will still be able to save several hundred million dollars.

Mr. COCHRAN. Mr. President, both the House and Senate placed a high emphasis on providing a sufficient amount of funding for the operations and maintenance account this year. Like many of my colleagues, I am concerned that the administration is failing to ask Congress to provide the Department of Defense with resources adequate to perform the mission it is charged with. I am also concerned that, notwithstanding administration pronouncements to the contrary, we are sliding back toward the hollow force of the late 1970's. Though we have increased the amount of money provided for the O&M account this year, there is only so much our military—the people and equipment—can do. We have reached the point, in many cases, where more people and more equipment are necessary, not just additional O&M funds.

Mr. STEVENS. Mr. President, the point raised by the Senator from Mississippi is entirely correct. On August 16, 1994, Secretary of Defense Perry was present to welcome the U.S.S. *Inchon*, an amphibious assault ship, back from the Caribbean. This ship deployed to the waters off of Haiti 2 weeks after returning from a 6-month deployment, where it was stationed first off of Bosnia and then off of Somalia. Despite the policy of having Amphibious Ready Groups—which are formed around amphibious assault ships, such as the LHD–7—at sea for 6 months and then back in port for 12 months, the *Inchon* had to steam out of Norfolk for Haiti 2 weeks after returning from a difficult 6-month deployment. Secretary Perry, when welcoming home the *Inchon*, said that the current operations and personnel tempos are too high, and that there continues to be a military requirement for 12 Amphibious Ready Groups. We currently have 11 Amphibious Ready Groups, and the only way to form a twelfth is to build LHD–7. I concur with Secretary Perry's comments, and ask that they be included at the conclusion of these remarks.

(See exhibit 1.)

Mr. COCHRAN. Mr. President, I thank both the Senator from Alaska and Senator INOUYE, the chairman of our subcommittee, for their support for LHD–7 again this year. I look forward to working with them next year to fully fund the ship.

[Exhibit 1]

SECRETARY OF DEFENSE WILLIAM J. PERRY REMARKS—TO "INCHON", AUGUST 6, 1994

SECRETARY PERRY: First of all, I wanted to simply welcome these marines and sailors back home. Secondly, I wanted to thank them, not just for a regular deployment, but for an extraordinary deployment. As you probably know, this was a second deployment—a two month deployment—tacked onto a six month deployment to Somalia.

I wanted to also comment that they had two extraordinary missions during these two different periods of deployment that they're on. In Somalia, they were executing a tactical withdrawal one of the most difficult military maneuvers to do well—and they did it very, very well. I wanted to thank them for the excellence of the operation that they performed there.

In Haiti, it was a standby operation. Even though some of the gossip was that we were down there for an invasion, the fact is, we were down there to provide an emergency evacuation capability should it be needed. Luckily, it was not needed, so we were able to bring them back. And they're now replaced with the WASP which is there to provide that function—again, if it were to be needed.

One of the specific reasons I came was to get some first-hand flavor for the stresses and strains that come from extra long deployments. We have what's called a personnel tempo, which is designed to be six

months on deployment and then 12 months back in training and work outs. So we had them on the six-month deployment and then, instead of having them back for 12 months, we had them back for two weeks and sent them out again for two months. I wanted to assure them that the decision to send them out again after two weeks was not made lightly at all. In fact, General Shalikashvili and I both agonized over that decision before we actually did that. We did it because the mission was an important mission and needed to be met right then. And they were the best ready—the best trained unit—for doing it at that time, and we wanted to send the best. But we also committed, at the time we did that, that we would get them replaced just as soon as it was feasible to do that, and we've done that now by sending the WASP.

It's also worth noting that we expect to catch up with this. That is, the next planned long deployment of this battalion will be next December—December of '95—so there will be some catch up in the deployment phase.

All in all, one of the biggest problems we have today with the reduction of the military forces but no reduction in military needs—in mission needs, an increase in military needs—is a strain on the operational tempo that we're conducting. It has two different potential effects. One is it could take people out of the normal training cycle. We have to be very careful to ensure that we maintain the training cycles, that we maintain an adequate readiness for our forces. Second is the wear and tear on the morale of people and their families.

So what I was really trying to do today was get a first hand feeling of that latter point—the wear and tear on morale—by talking with the Marines, talking with the families. You don't get a flavor of that from reading the statistics and reading the reports. You get it by going out and talking with people and this seemed like a particularly good day to do that.

Q: What was the reaction?

A: Generally positive today, but mixed. There is no question that the families felt the stress and the strain of this long deployment, particularly the second deployment. There's no question that there was some resentment on the part of some of the families about this second deployment. I would like to have promised them that the next big deployment wouldn't occur until December of '95. But the fact is, all I can promise them is that's what the plan is, and that I cannot control the emergencies that might come up in the world between now and then. It's always possible that there will be an emergency and we'll have to pull them out sooner, but our plan is . . .

Q: [There was a Time magazine] article (inaudible) deadline for an invasion of Haiti. Does that mean you're opposed to an invasion?

A: My position on that, which I've stated several times, is that I think an invasion of Haiti is the last alternative that we should consider. We have plenty of other alternatives to develop first. We already have a course of what I call coercive diplomacy underway which are very heavy duty sanctions. And those are not, even today, not fully in effect, not fully biting the regime in Haiti today. We have just recently started to shut the back door on the sanctions—blocking off the Dominican Republic. That has to happen first. We're some period of time away from seeing the effects of that diplomacy.

Q: How long . . .

A: The last thing I will do is give you an estimate on that as to when or even whether. I have some optimism that this coercive diplomacy is going to be effective. I want it to have its full chance to work. If we have to go to an invasion, the conventional wisdom is that this will be a piece of cake. And I don't like that point of view. Any time you have a good operation an invasion, a forceful entry—you have a danger of a very high risk of casualties. The casualties from the possible resistance on the part of the Haitians, a large complex operation like that, some casualties, some accidents can happen. So we don't take that decision lightly and we will take every alternative we can to see that we don't have to do that.

Q: Have you made a decision about how many ARGs are appropriate, then, to help relieve some of this?

A: Yes. Our plan is to have . . . Let me put this in terms of LHAs and LHDs which is sort of the flag—the main ship of an ARG. Our plan is to maintain 12 of those. Coincidentally, that's the number that we have for carriers. But it's more than a coincidence. In both cases what that means is as we expect to be able to deploy three of them in three regions of the world simultaneously; and with 12, you can work out the ratio on that. That means if you're on a six-month overseas, there's 12 to 18 months then back in the States. It also allows a little time to rework on the ship.

So we will have enough ships to maintain the personnel tempo that we consider desirable—the operational tempo that we consider desirable.

Q: Your operational budget? These deployments have gone right into . . . You haven't had any additional funding for these * * * .

A: Yes. We have gotten—I don't want to be complacent about the funding—but we did put in for, and got approved, a supplementary for most of our extra deployments last year. As we speak, we have a supplemental being considered by the Congress for the deployments we made to Rwanda for humanitarian purposes. And I think we're probably likely to get $170 million supplemental appropriation for that.

The defense budget is just for maintaining the defense force. When you go on operations, that costs additional. So [for] every operation we go on, we have to somehow find additional funding for it—or the alternative is to take it out of the training and take it out of the operational account. That's what my job is—to resist that, and to be sure that we take on additional operations, we get the additional funding that goes with it.

These are not necessarily negative to readiness, if you can supplement the funding. What is happening on these operations would be generally good training in and of itself. But if you fund them out of the O&M account—the operations and maintenance account—then what you are doing is taking away the money that would have been used for training, that would have been used for quality of life initiatives, that would have been used for things around the base. That's what I'm resisting.

PRESS: Thank you very much.

CARRIER REPLACEMENT PROGRAM

Mr. SASSER. I would like to address a question to the distinguished floor manager of the bill. I noted that in conference the House receded to the Senate with regard to the amount appropriated for the carrier replacement program. The conferees thus cut the Navy's original request by $162 million, as was proposed by the Senate. According to the Senate report, however, the Senate's lower figure reflected concerns about the prices contemplated by the Navy, not about the specific equipment and services to be procured. Thus, I would assume that it was not the intention of the conferees to cancel the procurement of any equipment or services—such as the procurement of components or reactor fuel—that were contemplated by the Navy in connection with this and earlier requests. Is my assumption correct?

Mr. INOUYE. It is in fact correct.

DOD APPROPRIATIONS CONFERENCE REPORT

Mr. BYRD. Mr. President, I commend the chairman of the Defense Appropriations Subcommittee, Senator INOUYE, and the ranking member on the Defense Subcommittee, Senator STEVENS, for their superlative efforts in guiding this measure to completion prior to the beginning of the new fiscal year. Their work becomes ever more difficult with each year, as the budgetary constraints imposed upon the defense budget, and all discretionary budgets, become tighter. The chairman and the ranking member of the Defense Subcommittee, and their fine staff, have worked very hard to balance all of the competing needs and desires within the fiscal year 1995 Defense appropriations bill.

I also want to thank the Defense Subcommittee, and the conference, for agreeing to fund the restoration of a limited, three-plane, SR–71 reconnaissance contingency force, which was authorized in the conference agreement on the fiscal year 1995 Department of Defense Authorization Act. We are all aware that in the last few years, the world has been beset by troubles. One of these troubles has already required the deployment of United States military forces in a war against Iraq. Another troubling situation is still bubbling away on the Korean Peninsula, sometimes at a low simmer, sometimes looking like it is coming up to a boil. One of the critical lessons we learned from the Persian Gulf war is that, in a threatening situation or during the conduct of a war, a military commander cannot have too much information, too many maps, or too many "looks over the hill" to see what the enemy is doing. The Department of Defense's "Final Report to Congress on the Conduct of the Persian Gulf War" in 1992 noted that:

> Imagery was vital to Coalition operations, especially to support targeting development for precision guided munitions and Tomahawk Land Attack Missile attacks, and for BDA [bomb damage assessment]. Operations Desert Shield and Desert Storm placed great demands on national, theater, and tactical imagery reconnaissance systems. The insatiable appetite for imagery and imagery-derived products could not be met.

The U.S. Defense Mapping Agency had to use Landsat and SPOT data to create maps for the U.S.-led coalition's use in that war.

Mr. President, our national ability to meet that "insatiable appetite" has

not improved in the intervening years. The "Final Report to Congress on the Conduct of the Persian Gulf War" went on to note that:

> The SR-71 could have been useful during Operation Desert Shield if overflight of Iraq had been permitted. In that case, the system would have provided broad area coverage of a large number of Iraqi units * * *. During Operation Desert Storm air operations, the SR-71 would have been of value for BDA [bomb damage assessment] and determining Iraqi force dispositions.

It is for this reason that I again, as I had in a letter to the Secretary of Defense before the war with Iraq, broached the subject of bringing the SR-71 Blackbird reconnaissance aircraft out of forced retirement.

In 1991, my suggestion to then Secretary of Defense Cheney was not adopted. The SR-71 program had been terminated as a full-fledged operational activity involving 12 aircraft in 1990 on the grounds of cost, lack of need due to the end of the cold war, and the promise of follow-on systems then in development. The follow-on to the SR-71 has since then also been canceled. The SR-71 Blackbird remains our sole manned, survivable, penetrating reconnaissance aircraft. The Congress had acted to preserve that capability. In June, 1990, the Secretary of the Air Force directed the Air Force to "place three SR-71A aircraft and six associated reconnaissance sensors and electronic countermeasure suites into long-term storage, rather than a flight ready status, as a hedge against a protracted conflict some time in the future." This was a far-sighted move. I believed in 1991 that we should have taken advantage of that foresight, and I continue to believe that we should take advantage of this fortuitous circumstance and create a contingency capability for the SR-71 in the face of the potential for conflict that continues to exist on the Korean Peninsula. Our military forces deserve access to every tool that we can provide, particularly tools of such demonstrated capability and need.

Unmanned aerial vehicles, or UAV's, have been touted as a penetrating and survivable follow-on to the SR-71 and, indeed, in a few years they may be developed to that point. Very high expenditures are under consideration for a family of various UAV's, amounting to almost $2.3 billion over the next 5 years. The funds for UAV development have come in part at the expense of upgrades and overhaul to other existing airborne reconnaissance platforms like the U-2 and RC-135, which unlike the SR-71 are not survivable over hostile territory. While potentially useful, the current program of UAV development is extremely ambitious and may not be fully attainable in the current constrained budget environment. The SR-71 is a cost-effective stop gap that makes use of existing, but still state of the art, equipment to fill an inarguable gap in battlefield intelligence. I do not view it as a competitor of UAV's—I support funding for an effective tactical UAV program.

The SR-71 as an aerial surveillance system complements other "national technical means," as satellite systems are euphemistically termed. A 1991 report by the Office of Technology Assessment, "Verification Technologies: Cooperative Aerial Surveillance," cites a 1990 report to the Department of Defense that states:

> The existence and utility of reconnaissance satellites is accepted . . . Satellite orbits are highly predictable. It is taken as a given by each side that the other will refrain from some activities, which would otherwise be observable, during a satellite pass—once or a few times a day, say for a total of 20 minutes. The long advance predictability of reconnaissance coverage makes it possible to hide, by careful advance scheduling, even very large and elaborate activities. Each side might worry, in the extreme case, that preparations for war or treaty breakout could thus be hidden.

The scheduling and route flexibility provided by aircraft platforms such as the SR-71 make it very nearly impossible to avoid detection. Properly employed, there should be no advance warning of when or where an SR-71 might fly. Given the repute of the North Koreans in concealing their facilities and installations even in peacetime, this flexibility might be essential should tensions escalate or hostilities erupt on the peninsula.

"National technical means" of intelligence collection will remain essential, but have some limitations, as I have just illustrated. Another weakness of current satellite intelligence systems, but a strength of the SR-71, is the ability to provide synoptic broad area coverage of large swaths of ground, needed for monitoring overall enemy forces dispositions and for specialized and updated mapping. Prior to the Persian Gulf war, the United States acquired Landsat and SPOT satellite images from which to build maps, because United States intelligence systems were swamped trying to monitor Iraqi military activities. Buying Landsat and SPOT imagery for these needs was a stopgap measure. We might not be so fortunate the next time a crisis arises. Nor may we benefit from 6 months to prepare for a conflict, as we did during the Persian Gulf conflict. Military reconnaissance missions' requirements for timeliness often exceed the current capabilities of civilian satellite systems. According to a 1993 Office of Technology Assessment report, "The Future of Remote Sensing From Space: Civilian Satellite Systems and Applications," Landsat satellites pass over any given place along the equator once every 16 days, while SPOT passes over once every 26 days. Each system may require weeks to process orders. The report goes on to state that "existing civilian satellite data are not adequate to create maps with the coverage or precision desired for military use."

The same report also notes that because other nations control some of the most capable civilian satellite imaging systems, they could in the future deny the United States access to their systems. Additionally, since all countries now generally follow a nondiscriminatory data policy, any purchaser can buy imagery at the same price and on the same delivery schedule. This means that in the future, Iraq or some other belligerent could purchase Landsat, SPOT, and other civilian satellite imagery to prepare their own battle maps for their troops or for their own future cruise missile systems. During the Persian Gulf conflict, both the SPOT and Landsat organizations cut off Iraq's access to satellite imagery, but such cooperation is not assured in the future as more and more companies and countries attempt to enter the satellite imaging business.

The SR-71, on the other hand, could have provided photographic coverage of Iraq in under 3 hours of flying time. It could have covered the country at regular intervals—daily or every several days, if necessary—to help update battle maps showing the widely dispersed Iraqi troop positions. Such missions might also have helped to reveal other Iraqi activities involving their nuclear, biological or chemical weapons industries that were uncovered only with great effort after the war. With electronic intercept sensors available for the SR-71, Iraqi air defense equipment could have been pinpointed prior to bombing raids. And with a different camera, the SR-71 could have followed bombing missions in to provide post-bombing damage assessments. An existing radar suite allows the SR-71 to support U.S. forces even in bad weather or at night, helping to keep an unblinking eye on every movement of enemy forces.

In any future conflict, the capabilities of the SR-71 would augment support to U.S. combat forces. A limited contingency capability involving three aircraft can be reconstituted for as little as $100 million, and maintained in standby status for under $50 million per year, according to estimates provided by the Defense Airborne Reconnaissance Office and by the contractor. The contractor is confident enough in these estimates to willingly accept a cap on the amount provided for the reconstitution of this capability. Over $700 million worth of spare parts remain in storage, ranging from spare engines to spare tires. By basing the contingency aircraft with the NASA-operated SR-71 fleet that is used for scientific studies, additional savings are possible for sharing support equipment. In this scenario, 12 months of operations would include one 30-day deployment in which 10 overflights would be

conducted. If or when military tensions escalate, the operating tempo could be readily increased to meet the needs of the local commanders.

More creative use of the SR–71 is possible even while the aircraft remain in contingency status. In March, 1993 for instance, the United States used Landsat and SPOT data to create maps of the former Yugoslavia in order to support airdrops of food and medical supplies to towns and cities under siege in eastern Bosnia. With the greater resolution and finer detail achievable with SR–71 imagery, greater precision in airdrops would have been possible. Similarly creative use of the system is possible in support of humanitarian efforts now underway in Rwanda and Zaire, without drawing national collection systems away from other areas of interest.

Finally, I would note that an overflight by an SR–71 can be a potent signal to a potential adversary of the seriousness of U.S. intentions. Even moving an SR–71 into a region underscores U.S. intentions to support possible military actions by every means possible. It is a mechanism that the President can use selectively to demonstrate national will as a political instrument. Imagine the message received by an adversary when an unarmed, nonhostile SR–71 aircraft sweeps across their country at high speed—a portent of future waves of bombers that could follow. It is a message that no satellite blinking across the night sky can send.

During the period leading up to the Persian Gulf war, a political decision was made not to overfly Iraq, despite the potential intelligence that might be garnered for the United States and the coalition forces. But to conclude from that decision, as some have, that no American political authorities will ever have the "political will" to overfly another country, even when the vital interests of the United States demand it, denies the idea that any lessons were learned from the Persian Gulf war experience. A New York Times article from July 4, 1994, says that "senior officers questioned whether the United States had the political will to use the aircraft against North Korea, its likeliest target." I reject the assumption that we are incapable of learning from the past. It is not the job of military officers or professional intelligence officials to second guess the political will of our elected national leaders. Far better for the political authorities to have an instrument in hand to use if necessary, than to deny them the opportunity to use it by assuming that the Nation's leadership will never have the political will to overfly a nation if our intelligence needs, and our combat forces at risk, demand it. Reestablishing a limited contingent of SR–71 Blackbird reconnaissance aircraft is a prudent move, and one that I am glad that the conference has approved in this measure.

TECHNOLOGY REINVESTMENT PROJECT

Mr. PRYOR. I would like to thank my good friend and colleague, Senator INOUYE, for his assistance regarding funding for the Clinton administration's technology reinvestment project [TRP]. I am pleased the conferees agreed to fund this important defense conversion program at $550 million for fiscal year 1995.

However, I am concerned about language in this bill requiring the military services to exclusively select focus areas for $75 million of these funds. I am specifically concerned that the word "exclusively" would be interpreted to mean that the military services would operate outside of the current structure of the TRP when selecting these focus areas.

I therefore ask my friend, the Senator from Hawaii, whether the word "exclusively" was intended to encourage the military services to operate separate from the other agencies in TRP when selecting focus areas for this important program?

Mr. INOUYE. I thank Senator PRYOR for his question. I can answer by simply saying that it would be appropriate for the military services, in selecting focus areas for TRP, to consult with the other TRP agencies. Indeed, it is our hope that the military services will play an integral role in setting all TRP focus areas. The services have a unique perspective on how to maximize the military utility of these dual use funds. As a result, this subcommittee hopes that the military services will be allowed to actively work within the framework of the TRP to ensure the military utility of TRP funds.

Mr. PRYOR. I thank Senator INOUYE for his leadership and for his assistance with this important program.

Mr. NUNN. Mr. President, I would like to commend the managers of the fiscal year 1995 Defense appropriations bill, Senator INOUYE and Senator STEVENS, for their work in bringing this conference report before the Senate today.

As I well know, the managers faced many difficult choices this year. The defense budget is stretched very thin, even without the many contingencies which the Defense Department has been called on to respond to in recent months. The supplemental included in this bill will help the Defense Department meet the fiscal year 1994 costs of these contingencies without cutting funds from other readiness-related efforts.

I particularly want to commend the managers for their efforts in preserving the requested funding for the Cooperative Threat Reduction Program. Now that many of the international agreements are in place, I believe this program is ready to move forward more rapidly. The full funding of the $400 million request included in this bill will support projects which I believe will make significant contributions to our national security.

I also want to commend the managers for continuing to fund DoD's efforts in support of the 1966 Atlanta Olympic games, and for providing funding to preserve the bomber industrial base for another year while the Defense Department studies our bomber requirements.

Mr. President, this bill does a good job of protecting the quality of our military forces, but many tough decisions lie ahead. The administration's budget forecasts continued declines in defense spending in years ahead, even as Congress is voting to make further reductions in discretionary spending. At the same time, Secretary Perry and Deputy Secretary Deutch are attempting to find the money to increase military pay raises above the levels currently included in the administration's budget, which I believe is essential.

I remain concerned that the projected funding levels for national defense over the next several years will not be adequate to maintain the current readiness of our forces; provide for their needed modernization; support the compensation and quality of life improvements that we all want for our military members and their families; and still support the force structure necessary to carry out the full range of missions that we expect our military forces to be able to carry out.

Finally, as the new fiscal year starts on Saturday, our troops are deployed in Haiti. The costs of this operation are not included in the fiscal year 1995 authorization and appropriation bills, and will have to be addressed in a supplemental next year. The defense budget is going to continue to be under enormous pressure in the months and years ahead.

DON RICHBOURG

Mr. INOUYE. Mr. President, as a final note before we adopt the conference report, I wish to call attention to the dedication and service of a member of the professional staff who will not be with us to work on the Defense appropriations bill next year. He is a thoroughly competent professional, a quiet man whose depth of knowledge of the appropriations process is unmatched. He has earned the respect of the Senators and Senate staff with whom he has worked for the past 25 years.

Mr. President, I am pleased to have this opportunity to recognize Don Richbourg, a member of the professional staff of the House Appropriations Committee. I have worked with Don for many years, first on the foreign operations bill and more recently on the Department of Defense appropriations bill.

Mr. President, Don Richbourg has served the Congress well. He has served

the Nation well. We will miss him, and we wish him well.

Mr. President, has all time been consumed?

The PRESIDING OFFICER. All time has expired.

Under the previous order, the conference report on H.R. 4650, the Department of Defense Appropriations Act, is agreed to.

The conference report on H.R. 4650 was agreed to.

The PRESIDING OFFICER. The motion to reconsider that vote is laid upon the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The clerk will report the pending business.

The bill clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the bill (H.R. 4649) entitled "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes," and concur therein with an amendment.

Mr. HELMS. Mr. President, as I understand it, the amendment sponsored by Senator DOMENICI and Senator BOREN is the pending business. Is that correct?

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator is correct. That is the pending question.

Mr. HELMS. I thank the Chair.

Mr. President, a lot of people who profess to admire Thomas Jefferson do not want to get even in the vicinity of the positions that Thomas Jefferson took. One of the great books that all Senators ought to read is a little book written by Thomas Jefferson, entitled, "Manual of Parliamentary Practice for the Use of the United States Senate." In this book, which is sort of a second Bible to me, Thomas Jefferson implicitly but nonetheless clearly warned those who in the name of institutional reform or ending gridlock or any other such contrivance seek to alter the rules which govern debate in the Senate.

Jefferson clearly sounded a warning which is being ignored time and time again. You hear all of these arguments about changing this rule and changing that and expediting this procedure. I wish Thomas Jefferson could come in that door and say, "Look here, fellows. Stop it." In my judgment, if Tom Jefferson were around today, he would disdain those who propose to change the Senate rules. In 1801, 12 years after the convening of the first Congress, Thomas Jefferson wrote this:

> Nothing tended to throw power into the hands of administration and those who acted with a majority of the House of Commons, than a neglect of, or a departure from the rules of proceeding.

Parenthetically, let me say, he was talking about rules of proceeding of the Senate. He was talking about those who might propose to change these rules. Then he continues. He said:

> * * * that these forms [rules], as instituted by our ancestors, operated as a check and control on other actions of the majority, and that they were in many instances, a shelter and protection to the minority against the attempts of power * * *
>
> * * * and whether these forms be in all cases the most rational, or not, is really not of great importance.
>
> It is much more material that there should be a rule to go by, than what the rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members.

Unfortunately, Mr. President, there are some among us who are poised to head down the very path that Thomas Jefferson warned us not to take.

I have reviewed the recommendations of the Joint Committee on the Organization of Congress, and I acknowledge that the pending amendment contains some proposals of which I approve, such as the abolition of joint committees, limiting committee assignments, and the reduction in the size of personal office staffs and committee staffs. I am all for those.

But there are proposals that I believe Thomas Jefferson would reject out of hand—for example, the projected restrictions on the ability of a Senator or a group of Senators to debate and examine legislation could ultimately fracture the constitutional balance of power which has existed between the two Houses of Congress since the year 1789.

I do not make this observation lightly. There is no right as essential to maintaining our freedoms, nor is there a right as misunderstood, as the right of unlimited debate in the Senate of the United States. For more than 200 years the Senate has wisely guarded its role as a check on the "passions" of the House—to use James Madison's words—and as a court of last resort for the views of a minority—be it a minority of one Senator, a minority party, an ideological minority, or a regional minority. We must not do harm to unlimited debate.

In 1841, John Calhoun fought against the rechartering of the Bank of the United States. In debate, he remarked that what set the Senate apart from the controlled atmosphere of the House was:

> * * * the minority's unquestioned right to question, examine, and discuss those measures which they believe in their hearts are inimical to the best interests of their country.

As a result of Calhoun's fight, the Senate's role as the forum for protecting the rights of the minority became an accepted facet of American Government. Last year, a group of western Senators—Republicans as well as Democrats—used the same tactics, practiced by Calhoun and others, to prevent the majority of both Houses from trampling on the rights of sparsely populated States which derive substantial revenue from those who use public lands. If the right of unlimited debate had been curtailed, the needs of this regional minority would not have been served. The filibuster forced a recalcitrant Congress and adminisration to pay attention to those who otherwise would have been ignored, as if they were a ship passing in the night.

The so-called parliamentary reform advanced by the plan of the Joint Committee is the abolition of the right of unlimited debate on a motion to proceed to the consideration of a bill. Because recent Senate custom has allowed the majority leader to move to consideration of legisaltion at his pleasure, this change will represent a major expansion of the majority leader's power to set and dictate the Senate's schedule.

The majority leader is supposed to lead the Senate but he is not supposed to dictate to it. And that line has been crossed time and time again. The reform package would also require a three-fifths majority to overturn a parliamentary ruling of the Chair after cloture is invoked, again broadening the scope of the majority leader's power.

Mr. President, it is clear to anybody who reads the history of the Senate that the Founding Fathers never intended that any Member of the U.S. Senate, including a majority leader, assume the trappings of the Speaker of the House of Representatives who singlehandedly controls the timing of debate, controls interpretation of the rules of the House, and through his surrogates on the Rules Committee, even controls what amendments will or will not be considered by that body.

If and when the Senate majority leader—regardless of which party, and there are a lot of folks hoping that the mantle of control moves from one party to the other after the November election—is allowed to acquire such powers, and this legislation is the first step toward that, the Senate will be reduced to being nothing more than "an

appendage of the House," as the distinguished President pro tempore, the Honorable ROBERT C. BYRD, has so eloquently noted in his history of the U.S. Senate.

There is no Member of this body who understands more clearly what is at stake here than Senator BYRD. I look forward to his remarks on the pending amendment. Senators had better heed it because he knows what he is talking about and he knows what is afoot.

Those who have argued for the elimination of unlimited debate contend that in a democracy the majority must always rule.

I dissent from that with all my being, and I call attention to a guy named Pontius Pilate, who abdicated his responsibility to a mob. Must the mob always rule? That position is at odds with the very principles upon which this Government was built. Do not forget how we honor the men whom we call our Founding Fathers and what they created at Philadelphia over 200 years ago. They got down on their knees and they prayed for guidance in the creation of this country, because they understood that nothing can be created if there is no Creator. The Founding Fathers viewed the Senate as the last check—the last check—on the potential excesses of the House of Representatives and the executive branch. Without the power to filibuster, the Founding Fathers' plan would be decimated, destroyed. During his first days in the Senate, a man named Lyndon Johnson discovered why the Senate's prerogatives must be carefully protected. Here is what Lyndon Johnson said:

> If I should have the opportunity to send into the countries behind the Iron Curtain one freedom and only one, I know what my choice would be * * * I would send to those nations the right of unlimited debate in their legislative chambers * * * If we now in haste and irritation, shut off this freedom,—

Meaning in the U.S. Senate,

> we shall be cutting off the most vital safeguard which minorities possess against the tyranny of momentary majorities.

Mr. President, it is true that from time to time there have been abuses of the right of unlimited debate. At times, unlimited debate has been inconvenient to some. How many times do we hear, "Well, I have to catch a plane, I have a fundraiser back home, and if you keep on talking, I will miss my plane." I always say to them, "You ought not to have made the plans to go home on a working day."

This system was not designed for the convenience of a President of the United States, or the whims of a majority leader, or any party. This system was designed to protect all citizens from the dangers of hurried, arbitrary, and ill-considered legislation. And the Lord knows a pile of it flows through this Senate Chamber every year.

The current rules of the Senate strike a necessary balance between the need of the Senate to carry on its business and the need to ensure that the minority is not overwhelmed by the majority, because as history shows, a majority in this town is not always in step with the wishes of the American people. I could cite a number of pieces of legislation this year and last year that are in that category. The defeat of the President's so-called job stimulus package last year is just one prominent case where the majority was proved wrong.

So if the Senate is really concerned and really serious about reform, it should not dispose of the rules which have made this body the most powerful Upper Chamber in the world. Instead, the Senate should focus on: First, ethics reform; second, making the laws we pass here in the Senate Chamber applicable to Congress—Senators and Members of the House of Representatives; and third, a plan for using unspent Senate funds to reduce the Federal deficit and get that burden off the taxpayers' back. These are meaningful reforms, which would increase public confidence in, and respect for, the U.S. Senate.

I close, Mr. President, with words from a reporter's account of an address delivered by Vice President Aaron Burr on March 5, 1805. That was the day of his departure from the Senate. Aaron Burr's speech has been described as "the most dramatic ever delivered before the Senate." I think it is proper to close my remarks by quoting from that speech, or at least the reporter's account of what Burr said:

> He [Vice President Burr] further remarked that the ignorant and unthinking affected to treat as unnecessary and fastidious a rigid attention to rules and decorum. This House, said he, is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

That is a very, very interesting comment by Aaron Burr. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent I be allowed to proceed as in morning business for a period of time not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORY OF HARRY NALTCHAYAN

Mr. LEAHY. Mr. President, a couple of weeks ago, I was at my home in Vermont and received a call from Washington that Harry Naltchayan, the preeminent photographer of the Washington Post, had died unexpectedly.

Harry had been a photographer at the Post for 35 years, over a third of a century. I first met him when I was a very, very junior and very new Member of the U.S. Senate and I had taken my family to the premiere of the first Star Trek movie. We had gone, after the movie, to the Air and Space Museum, where the cast was meeting, and I had with me children ranging from about 5 or 6 years old to around 12.

Harry was there, looking for a photograph to take. He took photographs of the children talking with the cast. Frankly, I was far more pleased with that than I would have been with a picture of myself. I must say, they photograph a lot better than I. But he went beyond that. He had checked their names, where they lived, made up some prints, and sent them to them.

That was about 18 or 19 years ago, and my children to this day—now grown, two married—have those prints. And over the years, members of the LEAHY family have received other copies of pictures that Harry took.

He was an extraordinary person. It got so that anytime I went to something or saw a head of state visiting or a Presidential visit or major event at the White House, we would see Harry Naltchayan, a large, affable man with a poet's use of the camera. He would always holler out to me, I would see a great smile, and a flash would go off.

About a week ago, I was at an event where the White House press corps and White House photographers were, all of whom are extremely good—prize winners, excellent people. But I went over to them and I said that as much as I enjoyed seeing them there, I felt a sense of sadness not seeing Harry, because I think it was one of the first times I had been to something where he was not.

I feel so extremely sorry that this wonderful man, a great husband, father of some of the nicest children you might know—his daughters, Anie and Joyce, and sons Neshan and Haik. And, of course, his wonderful wife for all these years, Elizabeth. It is a shame that they could not have him for so many more years. But it is a great benefit to all of us, and to the people of this city, that we have had him for so many years.

So I am sorry to see a good friend go, but I am so proud of what he has left behind, with his family, his friends, and a tremendous body of work.

I ask unanimous consent the obituary that appeared in the Washington Post of September 17 be printed in the RECORD.

There being no objection the obituary was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 17, 1994]

PHOTOGRAPHER HARRY NALTCHAYAN DIES; WORKED FOR THE POST FOR 35 YEARS

(By Martin Weil)

Harry Naltchayan, 69, a photographer for The Washington Post for 35 years who won many awards and was widely recognized for his artistic gifts and personal charm, died yesterday after suffering a heart attack at his home in Annandale.

Adept in many areas of photography, Mr. Naltchayan showed a particular talent for portraiture, which he used to great effect in chronicling the Washington social scene at the White House, along Embassy Row and elsewhere. Among the city's movers and shakers, Mr. Naltchayan was recognized and welcomed for the quality of his work and for the warmth and humor of his vibrant personality.

A sophisticated man with a working knowledge of five languages and a feeling for the human condition, Mr. Naltchayan was a photographer and amateur athlete in his native Lebanon before coming to the United States in 1958 to make of his life an immigrant's success story.

He covered every president since Eisenhower, cut an imposing figure at work in his tuxedo at White House dinners, and was himself a guest at a State Dinner during the Johnson administration.

Photography was one of his life's constants. "He loved the business," said Jim Atherton, a former Post photographer editor. "That's why he was still working."

Although Mr. Naltchayan, with his white hair and air of old-world wisdom, seemed especially at home on the diplomatic circuit, he "went out and did the best he could" on the full variety of assignments that came the way of a newspaper photographer, Atherton said.

The assignments included crime and civil disorder. In the midst of some of those events, colleagues at The Post often got a chuckle from communicating with Mr. Naltchayan via his two-way car radio.

Invariably and eagerly, he responded "four-10" in place of the standard "10-four" familiar to citizens band radio enthusiasts and followers of television police stories.

"He was a real pro," Atherton said. "Fun to work with and always an asset to the staff."

A member of an Armenian family that settled in Lebanon, Mr. Naltchayan was born in Beirut and educated there at the College de St. Gregoire.

Photography was an early interest, as was bicycling. He and his brother Jean, were cycling champions as young men. In 1952, while they were pedaling along the Mediterranean shore, they came upon an event that helped determine Mr. Naltchayan's life.

The French liner Champollion, carrying pilgrims to Jerusalem, had run aground. Panic-stricken passengers were jumping overboard.

Mr. Naltchayan grabbed his camera. The pictures were exclusives. They appeared in magazines worldwide.

Later, Mr. Naltchayan received many assignments in the Middle East from news organizations, and he worked for the U.S. Embassy in Beirut.

Amid the factionalism of Lebanese politics, this association made life dangerous for Mr. Naltchayan and his wife, according to Washington photographer Fred Maroon.

"He probably would not have lasted if he stuck around," Maroon said. The Naltchayans came to Washington in 1958, and Maroon hired Harry Naltchayan as his assistant until a job opened at The Post.

"He had class," Maroon remembered. "He was a real gentleman."

Mr. Naltchayan was also a prominent figure in the Armenian American community in the United States.

"I don't think there was a celebrated Armenian in the country that he didn't cross paths with or get close to," Maroon said.

At the Post, recalled Dick Darcey, a retired director of photography at the newspaper, Mr. Naltchayan quickly demonstrated a variety of skills.

Faced with the need to get to a story quickly, he "drove like a French cab driver," Darcey said. He also demonstrated a gift for portraiture. Confronted by newspaper deadlines and the need to work quickly, Mr. Naltchayan snapped away on the fly at diplomatic receptions or embassy dinners.

Yet, when the pictures appeared the next morning, Darcey recalled, there frequently would be a telephone call from the ambassador of this or that country or from his wife, saying that their spouse had never been shown to such advantage.

"There's a special talent in photographing people," Darcey said. "Harry developed that talent."

Mr. Naltchayan won numerous honors, including at least four first place awards in the White house News Photographers Association contest and three first places in the Washington-Baltimore Newspaper Guild's Front Page contest.

In 1982, he won first prize in the World Press Photo Competition for a picture of President Reagan with three former presidents as they prepared to depart for the funeral of slain Egyptian president Anwar Sadat.

In addition to his brother, Mr. Naltchayan is survived by his wife, Elizabeth, of Annandale; two daughters, Anie, of Arlington, and Joyce, of Annandale; and two sons, Haik, of Annandale and Neshan, of Arlington.

Mr. LEAHY. Mr. President, I see a colleague on the floor and I yield the floor to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 2600 TO H.R. 1137

Mr. BAUCUS. Mr. President, Yellowstone National Park is a unique and fascinating place. Back in the 1850's, Americans first heard about Yellowstone's geothermal features from an old mountain man by the name of Jim Bridger.

He told about a place where water ran so quickly it heated the stream bed through friction—this explained why steam rose up from the edges.

He told folks about how you could cook a trout without taking it off the line—just catch the fish in the Firehole River and swing it into one of the steam cauldrons on the river's bank.

Well, folks in the 1850's were a little hard pressed to believe Jim Bridger. Today, however, millions of Americans have visited Yellowstone to see the geysers and mudpots and hot springs that make this such a singularly special place.

On behalf of myself and Senator BURNS, I submit an amendment to H.R. 1137, as reported by the Senate Energy Committee, that guarantees that Yellowstone will remain the marvel that it was, is, and should always be.

Last week, the Senate Energy Committee reported out H.R. 1137, the Old Faithful Protection Act of 1994. Unfortunately, this legislation, as reported, doesn't live up to its name.

During the committee's debate on this legislation, an amendment was accepted which substantially weakens the protection that Yellowstone National Park, this Nation's first national park, clearly deserves.

As amended, H.R. 1137 protects Yellowstone against damaging geothermal development in Montana but allows such development to occur in Wyoming and Idaho.

This approach makes about as much sense as leaving your wallet in the backseat of your car but only locking one door. Yellowstone deserves more than that.

My amendment restores complete protection to Yellowstone's world famous geysers, paint pots, mud volcanoes, and hot springs. It is identical to the original substitute amendment that was offered by Senator BUMPERS and accepted during the Energy Committee markup.

My amendment forbids geothermal development on Federal lands within approximately 15 miles of Yellowstone's boundaries.

It permits Montana, Idaho and Wyoming themselves to regulate geothermal development on State and private lands within this 15-mile buffer zone provided that each State develops a regulatory program that adequately protects Yellowstone.

My amendment is drafted so that Yellowstone Park is protected, private property rights are respected, and the appropriate role of the States in managing the water resources is recognized. It has the uniform, bipartisan support of the Governors of Montana, Idaho, and Wyoming.

While I recognize that time is short, I believe that there's very little more important than maintaining the integrity of Yellowstone National Park.

We owe it to future generations to preserve Yellowstone so that they can see the same wondrous sights that Jim Bridger saw 140 years ago. This amendment goes a long way to achieving as much, and I urge my colleagues to give it their strong support.

The amendment (No. 2600 to H.R. 1137) appears in today's RECORD under "Amendments Submitted."

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is amendment 2599 to amendment 2594.

Mr. GRAMM. Mr. President, parliamentary inquiry. If I ask for the regular order, would that bring the Gramm crime amendment to the D.C. bill back before the Senate?

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator is correct.

AMENDMENT NO. 2585

Mr. GRAMM. Mr. President, I want to take this opportunity this afternoon to talk about several issues. Like many Members of the Senate, as we face the end of this session, I have been busy doing many things related to the interest of my State on various bills that are working their way through the body. I have been involved in trying to absorb the President's GATT proposal, which is very difficult since—I do not know about other Members of the Senate, but I have not received the detailed explanations that I had hoped to receive, which has made it more difficult.

So we have had discussion now for several days on the floor of the Senate of issues to which I am at least tangentially related. And so, as a result, I wanted to come talk about them, even though they are not directly related to each other.

First of all, I want to go back to the amendment that is currently pending to the D.C. appropriations bill, an amendment that I offered on Friday. I was ready on Friday to have a vote.

Mr. President, I am not calling for the regular order. I am simply expositing.

At the end of last week, I offered an amendment to an amendment in disagreement on the D.C. appropriations bill that would have brought before the Senate for debate at that moment—in fact, did bring before the Senate—the Republican revisions to the crime bill. It is a very simple provision. Every Member of the Senate understands it.

When the Senate passed the crime bill—I am sure the presiding officer will remember—we voted for a crime bill that cost $22 billion. It went to conference with the Democrats. It came back as a $33 billion bill. The Senate adopted mandatory minimum sentencing for selling drugs to children of 10 years in prison without parole. The bill, as it initially came out of conference, overturned mandatory minimum sentencing for drug felons selling drugs at a junior high school and, in fact, did it retroactively in such a way that it could have let out of prison an estimated 10,000 convicted drug felons.

Needless to say, we had a very contentious debate on the crime issue. There were those who argued, as I did, that if social programs solve crime problems, that our Nation would be the safest spot on the planet. But demonstrably, this is not the safest spot on the planet. So Republicans wanted to offer a crime bill that went back and took $5 billion of pork-barrel spending on social programs out of the crime bill as adopted in the Congress and put back into the bill our mandatory minimum sentencing provisions.

Let me briefly go over those. First, in addition to taking the $5 billion of pork-barrel spending out of the bill, we wanted to guarantee that the $7.9 billion that we provided for prisons was actually spent on prison construction. As all Senators know, there is language in the final bill that is very general as to how this money may be spent. It makes it possible for some of the money to go to alternative correctional facilities. But it was the intention of the Senate that this money go to build new prisons.

It was our hope that we would stop building prisons as though they were Holiday Inns and that we would put prisoners to work. We then wanted minimum mandatory sentencing, 10 years in prison without parole for possessing a firearm during the commission of a violent crime or drug felony, 20 years for discharging the firearm, life imprisonment for killing somebody, and the death penalty in aggravated cases.

We wanted 10 years in prison without parole for selling drugs to a minor or using a minor for drug trafficking. As our presiding officer is aware, I am sure, one of our problems in drug enforcement is that minors are often used to deliver the drugs and pick up the money and, as a result, the drug kingpin ends up not being at the critical point where arrests are often made and where evidence collected from that point is in turn used for prosecution. We wanted to try to get at these people to say if you use a minor in a drug conspiracy and you were convicted of it, it was an automatic 10 years in prison without parole, and if you got out and were stupid enough to do it again, you went to prison for life.

We wanted to be certain that we deported criminal aliens. We have the absurd situation today where someone comes into the country illegally, robs a liquor store, is sentenced to prison for 10 years, serves about 18 months of their sentence in a State prison, they are let out of prison, they walk away and then a month later or 6 months later, the Border Patrol or the INS has to try to find him to deport him.

We had a provision in the bill that passed the Senate that said when they let them out of prison, the INS agent was there to pick them up and at that point they were deported. That provision, like our mandatory minimum sentencing for gun offenses and selling drugs to minors, was dropped from the final crime bill.

Finally, we wanted to overturn the provision of law which the President and the Attorney General spent 16 months to try to get adopted, and that is a provision that will overturn mandatory minimum sentencing and circumvent the will of the people of this country, as expressed through the Congress, that is, if somebody traffics in illegal drugs, they go to prison and they serve their full sentence.

Last week, I offered these crime provisions as an amendment to an amendment in disagreement on the D.C. appropriations bill. It was my hope at that point that we would have a debate on the amendment and that we might actually vote at the end of last week.

The distinguished majority leader, who was waiting to get recognition to basically end the debate at that point, asked me to agree in advance, which I was happy to do, that the manager of the bill would be recognized to suggest the absence of a quorum after I offered the amendment to give the majority leader an opportunity to decide how he wanted to proceed with my amendment.

Today is Thursday. This represents 1 week that this amendment has been pending before the Senate. The point I want to make is a fairly obvious point; and that is, I offered the amendment because I wanted to vote on it. I want to pass a crime bill that cuts the pork-barrel spending out of our initial crime effort that was adopted about 4 weeks ago. I want to pass a crime bill that grabs violent criminals by the throat and does not let them go to get a better grip. I offered the amendment last week because I am for the amendment. I believe if we have an up-or-down vote on it, the amendment will probably be adopted. If we divide the amendment into 10 parts, which we can do under the rules, I am certain that at least 5 or 6 parts will, in fact, be adopted.

The House will then be forced to vote on those amendments. If they accept them, then they would become the law of the land—well, they would go to the President as part of the D.C. appropriations bill. If he signed the bill, they would become the law of the land.

Now, since that time, there has been a great deal of suggestion that I am holding up the D.C. appropriations bill. Let me simply repeat that I offered my amendment last week. I was ready last week to debate the amendment, to vote on the amendment. I am ready today to debate the amendment, to vote on the amendment. I am willing to offer the majority leader a time limit on the amendment. I would be happy to have an hour equally divided, have an up-or-down vote on the amendment. I would be willing to have an agreement that if the amendment goes over to the House and they defeat it, that we would drop it for the rest of the session. I would like an agreement obviously, if they accept it, that we follow the regular procedure and, of course, the bill goes to the President and he can sign it or veto it.

So the point I want to make is, that while so many are unhappy that the D.C. appropriations bill has been imperiled by this and other amendments,

my point is that I offered my amendment last week. I have no desire whatsoever to hold up the D.C. appropriations bill. I would like a vote on my amendment. I am ready at any moment to have a short debate on the amendment. I would like to have a vote on the amendment.

I would simply like to say that we have been held up because the majority has not been ready to bring up the amendment.

Now, I am not complaining about it. I think the majority leader is perfectly within his rights to ask that the amendment be set aside to go to other business. I have tried, as I always do, to be reasonable and allow the majority leader to conduct the business of the Senate. But the point I want people to understand is that I want a vote on my amendment. I have no interest in holding up the D.C. appropriations bill. We are getting toward the end of the fiscal year. It will put hardship on the District of Columbia if we do not act. I think it is a terrible indictment of the District of Columbia that we are here still a day or so from the end of the fiscal year and yet they are already gasping for air in that they need this Federal money to spend at the first part of the fiscal year.

But that is another problem on another debate on another day. My point is this: Last week, I offered a crime bill because I am for that crime bill. I believe the American people are for it. I believe the American people do not believe that social spending will solve the crime problem. I believe the American people are for mandatory minimum sentencing. They want to grab by the throat people who use guns in violent crimes and drug felonies. They want to deal harshly with people who sell drugs to minors.

I want a vote on my amendment, and I urge those who express great concern about holding up the D.C. appropriations bill to engage in the debate. Let us set a time limit. Let us vote on my amendment. Let us move on with the D.C. appropriations bill.

On the other hand, I would have to say, Mr. President, that if the majority is unwilling to bring the amendment up to vote on it, when I am willing to do that, when I offered the amendment last week, then I hope they will do me the favor of not saying I am the person who is delaying this whole process.

All I want is a vote on my crime bill. If I am given that vote, I am willing to set a very short time limit on the debate. Let us have the vote. We either win or lose and then we go on about our business. The District of Columbia can go on about its business, and hopefully people will be happy. So I hope everybody understands where I am coming from on that issue.

GATT

Mr. GRAMM. Mr. President, I now want to turn to a discussion of GATT. I think we have had a lot of discussion about GATT. We only recently have received the President's bill. As I said, it is a 600-page bill. I think everybody is trying now to go through it and understand it.

What I wish to do today is to try to talk about GATT in general. I wish to talk about some very real concerns I have about what the President has proposed, but I want to make it clear where I stand on the fundamental issue because I think we are coming down to the moment of truth on this issue. It is a very important issue. In fact, I think those familiar with my record know that there is no stronger supporter of trade in the Congress than I am.

So let me first talk about GATT, the agreement, the procedure, what the President has done, what I object to, where we are, and where I come down on the issue.

First of all, expanding trade is vitally important to the future of America. I oppose protectionism in all of its forms. I think it is absolutely outrageous that we still have a world where protectionism is practiced, where the well-being and living standards of the working people of countries all over the world are artificially depressed to benefit special interests that would lose from full and free competition.

I take a back seat to no person in the Congress on the issue of supporting free trade.

The GATT process is a very important process. It represents one of the great achievements of the postwar period. I give Ronald Reagan a lot of credit for winning the cold war, for rebuilding the fence, for recruiting and retaining the finest young men and women who have ever worn the uniform of our country, for leading America, for pressuring the Soviet Union in tearing down the Berlin Wall, for liberating Eastern Europe and transforming the Soviet Union. But the most important ingredient in building the post-World-War-II world, the most important ingredient in winning the cold war, was trade. Trade made it possible to rebuild Europe. Trade made it possible to rebuild the economy of Japan. Trade made the economic miracle in Korea and Taiwan possible, and the growing wealth machine that was created by world trade ultimately applied such immense pressure that it mutated communism in China and it collapsed the Soviet Union internally.

GATT is a continuation of that process. As a continuation of that process it deserves our attention. I believe that the process itself deserves our support.

One of the objections that I have—and it is a very strong, profound objection—is that when the Clinton administration came into office, one of the changes it made to the GATT proposal was, for the first time, to make it possible for nations under specific sanction of the GATT to engage in industrial policy.

This was a new facet of the agreement reached by the Clinton administration. While the language in previous trade agreements had been either silent or vague, and I think painfully so, for the first time ever, under the agreement negotiated by the Clinton administration, it will be acceptable government policy under GATT for countries to engage in industrial policy. With GATT approval they can specifically set out a policy within the country to use government resources, government privilege, government favor to try to foster industries that are under political favor by the host country.

I think that is a very bad mistake. I think it flies in the face of everything we know about economic development. I think it is counter to the overall objective of trade and competition and free enterprise, and I strongly oppose it.

One of the things, however, that you have to condition yourself to in a democracy is that you lose elections. When the American people elected Bill Clinton, they in essence moved the country toward a greater role for Government in the economy. In the process, part of what they voted for, whether they knew it or not, was a movement toward having the government participate in an activity of choosing winners and losers in the economic process. I have no doubt about the fact that the country will be poorer and less free as a result of that policy.

When it got down to the bottom line in looking at the industrial policy built into the GATT agreement, which provisions I adamantly oppose, and the overall GATT agreement, which will lower tariffs, which builds on our success in the postwar period, and which is, I believe, essential to expanding world trade and continuing the world wealth creation process in motion, I decided that this is one of these provisions you have to swallow hard and you have to accept.

So while I am strongly opposed to the industrial policy section of GATT, it is far outweighed by the positive aspects of the GATT agreement. If I believed that we could put GATT on hold until 1997, when I hope and believe we are going to have a new President, and we could renegotiate GATT and take this industrial policy stuff out, I would do it.

Let me tell you, however, that I am afraid that if we let Humpty Dumpty fall off this wall, we may not be able to get him back together again. And so while there would be gain in waiting for a new administration for a new GATT without this industrial policy provision, I think it is inherently dangerous to do it. I am afraid that we

could have growth in protectionism in the world. This is one of these unhappy occasions where if you lose an election it makes a difference; it changes policy. But that is what democracy is about.

Since the President has negotiated the GATT agreement, I would like to remind my colleagues that the GATT agreement was completed 9 months ago, over the last 9 months the President has been involved in a political process, trying to put together votes for GATT primarily by negotiating with members of one party, the Democratic Party.

Under our trade agreement procedures that we follow in Congress, we have what is called fast track. To the average guy that means absolutely nothing. To the trade process and to Congress, however, it means a great deal. What it means is that we have found in the past that you cannot go out and negotiate a treaty on trade with another country, or in this case with 125 countries, then bring the agreement back to Congress with the prospect of Congress rewriting it. You just would not have any hope of negotiating trade agreements.

So Congress reluctantly agreed to the process of the fast-track procedure, whereby the President's trade agreements were not subject to amendment. Congress had to accept them or reject them. It is a procedure that I support. I think there is no logical alternative to it if you want to expand world trade. Until the President submitted this GATT agreement, the procedure had been one where he submitted the agreement that had been reached internationally, and Congress either accepted it or rejected it. In each and every case we have accepted it.

What the President has done on this agreement is that he has fundamentally changed the fast-track process. Quite frankly, Mr. President, I worry that President Clinton may well have killed the fast-track procedure with this bill, because this bill is full of provisions that have absolutely nothing to do with the GATT agreement. Whereas, the Congress passed the fast-track process to allow the President to get an up-or-down vote on his trade agreement, what we are seeing now is all kinds of provisions in this bill, which we cannot amend, that have absolutely nothing to do with the GATT agreement that was signed 9 months ago.

Let me list some of these provisions.

We have a textile and apparel provision having to do with the rules of origin, that has nothing to do with GATT, that is counter to the stated objective of GATT, and that has only one purpose. That purpose is to buy votes in the Congress, from people who fundamentally are against expanding trade, by changing the rules of origin in such a way as to restrict imports and make working families in America pay more for clothing. This provision has absolutely nothing to do with GATT.

Mr. President, I am not opposed to the process of putting together bills and cutting deals. That is something that happens in Congress every day. I think some people are outraged by it, but I think it is a fact of life, and I am not criticizing the President for it.

What I am criticizing the President for is that this textile protection provision has nothing to do with GATT, and it should never have been put into this bill under fast-track procedures. This is something we should have been able to debate, to have amended, and to have thrown out of the bill or modified if we wanted to do it. What the President has done, in my opinion, is that has jeopardized passage of another fast-track bill because he has put in provisions that have absolutely nothing to do with the GATT agreement.

The President's bill extends the generalized system of preferences. This is not part of GATT. It has nothing to do with GATT. It is something that ought to be dealt with independently. The bill renews the Super 301 legislation, which is legislation whereby protectionist measures can be imposed if someone in the country claims that they are facing unfair trade practices. Mr. President, I am not wild about the Super 301 provisions, and I readily admit it. But the point is that these provisions have absolutely nothing to do with GATT.

We have in this bill a reform of the Pension Benefit Guarantee Corporation. That has absolutely nothing to do with GATT.

Mr. President, in order to pay for the GATT bill, since GATT loses revenues under the way we score bills—quite frankly I would like to change the way we score bills, because everybody knows that GATT will create jobs, that GATT will generate Federal revenues, and that the country will be a winner from the overall GATT agreement. I would like to see us change the way we score bills so we could look more realistically at things like GATT and at things like cutting the capital gains tax rate. But the current law of the land says that this bill loses money. And so under our budget process, the President had to come up with a way of paying for it.

We spend $1.5 trillion a year in Federal outlays. In order to pay for this bill, the President had to come up with about $3 billion a year of cuts. He had to save $3 billion out of $1.5 trillion of annual outlays of the Federal Government.

Republicans and many Democrats said to the President, "Do not ask us to waive the Budget Act. Do not ask us to say that we are willing to look the other way and violate a budget agreement which has been one of the few impediments to runaway Government spending and has been one of the few things that has kept the budget from exploding in the last 2 years." What did the President do? What the President did is basically come up with a series of gimmicks and tax increases because the President was unwilling, out of a $1.5 trillion budget, to find $3 billion of spending that was less important than passing the GATT agreement.

I have spent a considerable amount of time talking about it. Let me sum up where we are. The GATT agreement is far from perfect. I do not like the industrial policy parts of it. I do not like the abuse of the fast-track process. If I thought we could defeat this bill and hold the trade system as it is until we have a Republican in the White House and do it again and do it right, I would oppose this bill. But I am afraid that if we let Humpty-Dumpty fall off this wall, we are never going to get him put back together. So what I have decided about the GATT agreement itself, when you look at GATT as an overall agreement, the good in GATT far outweighs the bad in this proposal.

Questions have been raised about national sovereignty. I do not know, Mr. President, who made up the term "World Trade Organization." Whoever did has never run for sheriff in a small county in Texas or anywhere else, because that term is a term that just scares people to death. Most Americans hardly believe in national government. They certainly do not believe in world government. So this has created an outpouring of concern all over the country that somehow we are giving up national sovereignty as part of this agreement.

What we are talking about here is the enforcement of agreements. If you have an international trade agreement, you have to have an organization that prevents people from cheating. For example, we entered into the free trade agreement with Mexico. That free trade agreement allowed us, for example, to shift livestock back and forth across the United States-Mexican border. If the Mexican Government comes in and says that we in the United States use growth hormones for our cattle and, therefore, to protect their people from those growth hormones, they have to restrict American cattle being sold in Mexico, we have to have somebody come in and look at their charge and make a determination as to whether they are violating the trade agreement or whether there is a legitimate concern. In this case, if they did that, they would clearly be violating the trade agreement. Under that agreement, we have a panel made up of Mexicans and citizens of the United States, and what they would do is look at this claim and decide whether it was within the limits of the free-trade agreement. That is what we have in GATT, a dispute resolution process. You cannot have an international trade agreement without such an enforcement process, just as you cannot

engage in commerce without a system to enforce contracts, or in investment without a system of justice that would enforce property rights.

Had others negotiated the agreement, would this World Trade Organization have been structured differently? Probably it would have. Would it have been called a World Trade Organization? Almost certainly not. But I do not see the great threat to national sovereignty here that others have talked about. I do not believe that that concern would justify defeating GATT.

The bottom line is that we are not just voting on the GATT agreement. We are voting on many other provisions that have been added by this administration that have absolutely nothing to do with GATT. Some of these extraneous provisions have profound impacts on the trading system. Others cover everything from pensions to super 301 trade enforcement mechanisms, none of which have anything to do with GATT.

We also are going to have to vote on waiving the Budget Act to bring the bill up. I am still looking at this bill. In the end, I will likely support GATT. But here is where we are. The administration has added so many bad things to the enabling legislation that they are forcing people like me to look at GATT and say, given all these other factors that have nothing to do with GATT that are tied into this bill, is it worth taking all of these rotten provisions in order to get the GATT agreement?

I am not ready today to make that judgment, but I will say this: I know that we have a lot of negotiations underway. I know the distinguished chairman of the Commerce Committee has said that he is not going to bring the bill up until he has had the 45 days established by law. I do not have a dog in that fight. Quite frankly, I hope after the election that we will have a more Republican Senate and House. I hope at that time we will have more support for trade, and perhaps the President would not have to have so many rotten provisions in the bill to get it passed.

But I want to make this point clear: It may be that with a big clothespin on my nose, I can overlook all these rotten provisions which the President has put into the enabling legislation, that have absolutely nothing to do with GATT. It may be in the end that GATT is so important to the future of free enterprise and economic growth and job creation in the world that I can overcome all of these problems in this bill. But if the President cuts one more deal and puts one more rotten provision into this enabling legislation, I am going to oppose GATT and I am going to fight it to beat it.

So I hope the President is listening. I know he is trying to get Democratic votes. I know he is trying to cut deals with them. But at some point, the President is going to begin losing votes of people who believe in trade, people who support GATT. It is already a very heavy, smelly wagon that the President is asking us to pull. Put one more thing in this wagon, and I will not pull it; one more provision and I will certainly vote to sustain the budget point of order. I do not know, I have not gone through the whole agreement, and in the end I may not support it anyway. My inclination is to support it. But if the President adds one more deal, adds another provision, I hope he is getting votes for doing so because he is going to lose my vote,

Mr. FORD. Will the distinguished Senator yield for a question?

Mr. GRAMM. Certainly.

Mr. FORD. You are talking about cutting deals or adding something to GATT. As I understand, the Finance Committee has already reported GATT out from their committee, and it is on the fast track and it is unamendable. So if it is unamendable, there are no other deals to be cut. Unless you withdraw it and take it back, I do not know how you do that. As I understood the Senator and as I understand the rules of the Senate and fast track, to which he has alluded already, there are no amendments.

So, therefore, regarding the so-called arrangements that are accommodating Senators, as we have seen done around here for the last 20 years, we always try to accommodate Senators and their States and particular problems. So I just wanted to be sure, and I think I am right.

Mr. GRAMM. Let me reclaim my time. Let me go back to my point. There is no doubt about the fact that if the President allows the current GATT arrangement to stand, it is unamendable. But the point I am trying to make is this. Given the substantial roadblock from our colleague from South Carolina, the chairman of the Commerce Committee, there may be a temptation on the part of the White House to pull the GATT provision back to the White House, perhaps looking at withdrawing it and resubmitting it with some further change.

I wanted to say, for the RECORD, that this bill is already laden with a lot of irrelevant provisions, that have nothing to do with GATT. If they add one more provision, I am going to oppose GATT. I am going to fight it hard on the point of order, and I am going to fight it on final passage. I want to be sure they understand that, if they are cutting more deals, engaging in more protectionism with the idea of getting another vote, there is at least one vote they are going to lose. I am hopeful that they are not going to withdraw the bill and start the process over.

I say to the Senator from Kentucky that I do not believe they are going to. But I wanted to make it clear, because I know there are immense pressures, given the position that has been taken by the chairman of the Commerce Committee, and I know the President desperately wants this bill voted on this year. I just wanted to let the President know in advance, because when you believe in trade as strongly as I do, when you are talking about voting against GATT, it is a very serious matter.

We have reached the point where the benefits of GATT relative to the cost of all of these add-on, extraneous provisions is getting smaller and smaller.

Mr. FORD. Mr. President, this is interesting. I thought statutorily, once a bill is introduced, you do not withdraw it. Since it is introduced, I do not believe you can withdraw it. Your staff probably will give you the answer. But my knowledge of the rules and so forth is that you could not withdraw.

Mr. GRAMM. Reclaiming my time, Mr. President. I have been around here long enough to know that ways can be found. For example, on the crime bill, after a conference report was reported, the House went back into conference on that bill. I am concerned that the administration is obviously in trouble on this bill, and their opposition is coming from people who oppose GATT because they do not support more trade. I support more trade.

What I want to be absolutely certain of is that the administration understand that whatever they gain by doing more to restrict trade, to offset the objectivse of GATT, will cause them to lose people on the other side.

I hope that our colleague from Kentucky is right and that there is no possibility the bill will be withdrawn and resubmitted. I do not know in parliamentary terms whether it could happen or not.

I know that if people want to do something, and they are determined enough, and they are clever enough, under our rules they can almost always do it. Certainly, they could have a side deal dealing with another piece of legislation. There are many things that could be worked here.

I am simply trying to say that as a person who wants to support GATT, I believe that the President is making it very, very hard for people like me to support a position which we are very much in favor of. It is already hard. It was hard when the President put industrial policy into GATT. It got harder when the President added a variety of different provisions to the enabling legislation that have absolutely nothing to do with GATT.

I am saying that it is already a close call, and if we go any further, by any means, either by withdrawing this bill or by having a side deal where other bills would be passed as a part of the agreement, which happens all the time and could happen here, whatever the

President gains in votes he is going to lose at least one vote. That is a simple point and that is my point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, this GATT treaty will not go to conference. It has already been to conference and the House and the Senate came together and then the passable treaty language was sent to the White House for them to consider and then send to us.

So, one, I do not know of any statutory provisions that allow them to withdraw. It does not go to conference. What you see is what you get.

I do not understand why the Senator from Texas wants to threaten us with the fact that if he gets something else in GATT he will not vote for it.

I am sure he is aware of side deals. I do not know. I have not been able to culminate a side deal yet. But maybe he knows more about that than I do.

But, one, there is no statutory provision for withdrawing the treaty.

Two, it does not go to conference because it has already been there. So GATT is what you see is what you get. The Finance Committee has already met and they considered it. They have sent it out to the Senate floor. The rules here are the rules.

Under fast track, every chairman who has something to do with GATT has the ability to have that bill assigned to his committee or go to his committee for consideration and has so many days to keep it there.

Now, the time of persuasion is here. So we go from there.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

The Senate continued with consideration of the amendments in disagreement to the conference report.

AMENDMENT NO. 2597 TO AMENDMENT NO. 2596

Mr. FORD. Mr. President, the Senator from New Mexico offered an amendment which was Joint Committee on Organization of the Congress legislation. It is S. 1824.

Mr. President, I am not opposed to this piece of legislation. There are an item or two in it that I have agreed not to support.

I favor the 2-year budget very much, but that will not pass. The 2-year authorization is in the bill. So let me kind of go through a little history of what happens.

Mr. President, I oppose the amendment offered by the Senator from New Mexico because this amendment is not the bill which was reported by the Rules Committee.

When the Senate members of the Joint Committee on the Organization of Congress met on November 10, 1993, they unanimously adopted the recommendations of the chairman and vice chairman, Senators BOREN and DOMENICI. Those recommendations formed the basis of S. 1824, as it was introduced in February 1994.

The recommendations contained in S. 1824 called for, among other things: A 2-year congressional budget process, including biennial appropriations; stricter committee assignment limitations; a 2-hour limit on the motion to proceed to legislation; the elimination of all joint committees; limitations on the number of Senate subcommittees; reductions in the number of legislative branch staff; the abolition of standing committees if at the start of a Congress they fall below half their previous membership; and the periodic reauthorization of the legislative support agencies.

However, when the Senate members met, many Members made it clear that they did not support all of the recommendations. As a member of that joint committee, along with Senator STEVENS, I recall that several Senators made known their reservations about some of these recommendations.

At the outset of the Rules Committee's consideration of S. 1824, I said: "Although the Senate members of the Joint Committee voted unanimously to report the recommendation contained in S. 1824, no one should be misled. All the provisions of the bill do not enjoy unanimous support."

It was with that knowledge that several of the provisions of S. 1824 did not enjoy unanimous support, that the Rules Committee began its consideration of the bill in February 1994.

The Rules Committee held a comprehensive series of hearings to consider this legislation. In fact, the Rules Committee held five separate hearings on every aspect of this legislation. The sponsors of S. 1824 appeared before the committee on February 24, 1994.

And in four subsequent hearings, on March 10 and 17, April 28, and May 5, the committee received testimony from other Senators, congressional experts, the leaders of several legislative support agencies, and the former director of the Office of Management and Budget, and now Chief of Staff for President Clinton, Leon Panetta.

The committee hearings on this issue of legislative reorganization built upon the hearing record of the Joint Committee on the Organization of Congress. We had the benefit of all the hearings of the Joint Committee, and then we built upon those in our hearings. Many of the witnesses who appeared before the joint committee were witnesses at the Rules Committee hearings. These witnesses testified on issues ranging from Senate committees and floor procedures to biennial budgeting to oversight of the legislative support agencies.

As I stated, we heard from the former Director of OMB, Leon Panetta. We also heard from James Blum, the Deputy Director of the Congressional Budget Office.

The committee heard testimony on those portions of S. 1824 dealing with the joint committees and the legislative support agencies, including the Library of Congress. Several Senators presented testimony on the importance of retaining the joint committees.

The committee heard testimony from the senior Senator from Rhode Island, the Senator from New York, and the senior Senator from Maryland. These Senators all gave convincing testimony on the role that the joint committees play and the need and importance for their retention.

Another important factor that was considered in retaining the joint committees is that membership on the Joint Committee on Tax, the Joint Committee on the Library, and the Joint Committee on Printing is taken from existing standing committees. In fact, only the Joint Economic Committee is considered a separate standing committee with membership on that committee counting toward a Member's committee assignments. Membership on the Joint Committees on Tax, the Library, or Printing do not count against the limits on committee assignments.

The heads of the legislative support agencies stated their views on provisions that directly affected their organizations, such as the periodic reauthorization of the support agencies, preparation by the support agencies of annual cost accounting reports, and the feasibility of establishing a voucher allocation system for committees and Members using agency facilities and services.

In fact, the Comptroller General of the United States voiced opposition to repealing the permanent authorization of the General Accounting Office. He said that if that permanent reauthorization were repealed, it would subject GAO to partisan political pressure which would jeopardize the agency's independence and credibility.

Several of the other support agency leaders raised concerns about the voucher allocation system, cost accounting, staff reduction, and the applicability of certain Federal laws to their organizations.

All these considerations and views were considered by the Rules Committee when we met on June 9 to mark up the bill. After a lengthy debate and several amendments, the Rules Committee unanimously reported a substitute amendment. At that time, there was concern that S. 1824 included several provisions which would amend the Standing Rules of the Senate. Because the Senate is solely responsible for determining its rules of procedure, it was determined that these matters

should be included in separate resolutions which would be acted on only by the Senate. The substitute amendment to S. 1824 includes those matters that should be appropriately considered by both Houses of Congress.

Mr. President, the Rules Committee acted in good faith to give S. 1824 a full and fair consideration. We built upon the record which was established by the joint committee, and considered the views of the Members of the Senate, and of the legislative support agencies. To adopt the amendment by the Senator from New Mexico, in my opinion, is unwise and ignores the work of the Rules Committee.

More importantly, Mr. President, there is a real institutional concern that is raised by this amendment. It would permit the House of Representatives—I want to take notice of this—it would permit the House of Representatives, the amendment that is now before us submitted by the Senator from New Mexico, to determine the rules of procedure for the Senate. I do not think the House wants us to determine their rules and we certainly do not want them to determine our rules.

As this amendment is drafted, it permits the House to legislatively change the committee structure of the Senate—I do not think we want that—the rules of committees, they can change that, and the rules of the floor procedure for the Senate.

That is the reason we separated these out into resolution form so the Senate could vote on what applied to the Senate and the House could then vote on what applied to the House.

When the Rules Committee considered S. 1824, we separated the rules changes and incorporated those into two separate resolutions. Those resolutions, Senate Resolution 227 and Senate Resolution 228, were reported by the Rules Committee on June 16, 1994.

Senate Resolution 227 would make changes to committee assignments and structure. Senate Resolution 228 contains several provisions to revise Senate floor procedures.

To permit the House to debate our rules, to permit the House to have an opportunity to amend the Senate's rules through legislation is simply wrong and is in direct violation of the Constitution.

Mr. President, the Rules Committee has given this issue its full and fair consideration. In the name of reform, it is inappropriate to disregard the work of one of the Senate's committees, in my opinion. This is not the way we should be considering the reform of the Congress.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I am sure we are not going to be too much longer as far as Senator BOREN and myself.

But I just want to tell the Senate as to the last statements by the distinguished chairman of the Rules Committee with reference to giving the House authority to change the rules of the Senate, clearly, I hope that Senators know both Senator BOREN and Senator DOMENICI well enough to know we would not do that and we do not believe we have done that.

As a matter of fact, we have checked that very carefully. And the reason we put it all in one bill is because we agreed to all of it or none of it when we did this work, at least the principals did. We were not going to consider rules changes in the Senate, which are strictly the Senate's prerogative, if we did not adopt the rest of the bill.

We have been told that it is out of order for the House to consider any changes in that section of this bill that applies to the rules of the Senate. They have no authority, no power to do that. So it is in that context that we put it in. We would not put it in to send them something they could amend or change. They have no power to change, according to our readings from the Parliamentarians in both bodies.

Mr. FORD. I just say to my good friend from New Mexico, the very fact that we allow the House to vote on these rules, they then, in my opinion, are jeopardizing our ability to be the sole decisionmaker for the Senate. So the House rules are going to be voted on by the Senate and the Senate rules are going to be voted on by the House, because this changes the rules of both the House and the Senate and we allow the House to approve or disapprove it.

So, under those circumstances—I think that I am correct; the learned Senator from New Mexico is a lawyer and very articulate and he understands this; he has been through these procedures many times—but when we allow the House to vote on our rules under this amendment, then we are giving up the ability of the Senate to provide its own rules.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, I repeat, it is not the opinion of the Senator from New Mexico that the House of Representatives can do anything to our rules under the procedure we have chosen to follow. We do not believe they have any authority to amend any part of this.

But let me give you my last observations. I hope Senators will not vote in favor of a point of order on this entire reform package because of that argument, because, let me repeat, if the point of order is defeated, then the bill is before the U.S. Senate. And once it is adopted, it is subject to amendment and we could have debates as much as we would like on pieces of it. We could have a full-blown debate on any part, including the part that my good friend, the chairman, alludes to with reference to the rules changes.

I want to repeat my simple argument with reference to why the point of order which is going to be made shortly should not be granted. Frankly, it is kind of amazing—I hope Senators will consider it rather amazing—that we are asked to suggest reforms to the U.S. Senate, streamlining the committee system so that we can get our job done, we do that and we offer that here in good faith, and now we are told that it is subject to a point of order because it did not go to another committee to have an opportunity to look at some piece of it. What an irony.

I mean, here we are suggesting a way to reform, pursuant to a direction given us by this body to help streamline, have your hearings, report a bill, and now somebody is going to come down and say, "Kill the bill because it did not go to the Budget Committee for their consideration."

I really believe that would not be something that most Members would feel very proud of. After it is adopted, they can clearly take pieces of it and debate them and strike them and amend them.

But we just want an opportunity to lay before the Senate the product of the bipartisan, bicameral commission that worked very hard and reported out exactly what is before the Senate.

Now, as far as the Rules Committee, the Rules Committee had hearings and did what it thought it ought to do to the package we recommended. And, in a very real sense, Senator BOREN and I, who worked long and hard for almost a year, think that the package that was presented by the bicameral, bipartisan commission is the best product, better than what the Rules Committee did.

Now, that is nothing without precedent around here. We all vote changes to what committees recommend. It is nothing lacking in deferential treatment toward the Rules Committee. It is just saying that the two of us who cochaired this think this is a better product.

And, again, rather than kill this with a procedural point of order, let it live and let them offer that Rules Committee package as a substitute and let the Senate decide which they prefer, rather than to get rid of reform in one fell swoop with a point of order that seems to me to be the kind of point of order that cries out for a waiver.

Whenever we waive the Budget Act—you understand there is a little provision in there that says it is subject to a point of order unless the Senate in its wisdom decides to waive for good reason. And if there was a good reason to waive the point of order against this, we ought to consider that as a substantive matter.

There is no budget involved. There are no dollars involved. It is just the

process of sending it to the Budget Committee. After it has been heard, reported, and gone to the Rules Committee, send it to one more, and since you have not, you need 60 votes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Madam President, as the Senator well knows, he and I agree on a lot of items in this bill, items that I have long advocated. Some of them are not doable, the support is not there. So you take as large a step as you can.

The Senator from New Mexico indicated that this legislation as an amendment on the D.C. appropriations bill does not break the Senate rules. And I want to reiterate that we looked at the rules of the Senate very closely, and we felt that this package that set the rules of the Senate, the number of committees, the size of committees—and the House vote on what we could or could not do was taking away the authority of the Senate to promulgate its own rules. I think that is simple enough.

So what we did to try to prevent the House from having an opportunity to vote up or down on our rules, to amend this bill, we separated those items that we determined were changing the rules of the Senate, and we put those in resolution form.

Now the Senator says we ought to use that as a substitute. I cannot substitute a resolution for a bill. I have to change the resolving clause, I have to do a lot of other things. So I cannot do that, and I think the Senator understands that.

So I have the two resolutions and an amendment. And if the Senate in its wisdom could approve those two resolutions, then we have a piece of legislation that can go to the House, that those of us on the Rules Committee—and I say to my friend, we have the Republican leader on that committee, Senator DOLE. We have Senator BYRD, who is President pro tempore, on the committee. We have several learned chairmen and ranking members. They indicated this was what they thought we ought to do and supported that position. I am not sure if we had any opposition. It may have been unanimous when it came out of there. But those positions were accepted.

Now, I hate to see the House voting on Senate rules and procedures and the Senate voting on the House rules or procedures. That is not going to work. It is not going to fly. Even though you say you have it fixed, I think, any way you fix it, that if the House is put in a position to vote on ours and we are put in a position to vote on theirs, that we are not doing the right thing as it relates to the rules of the Senate.

I do not want to be cynical. I do not want to be obstructionist. I do not want to do those sorts of things. I want to pass some of these things. And under the circumstances and the rules of the Senate is where we are running into problems here. I think if my colleague would separate out what the Rules Committee had, and do that, you have a better chance of not stumbling and we would have a better chance of making provisions that I think most of the Senators want.

I do not have but two A's and one B. I am fine. So whatever is done under assignments of committees it does not bother me; I have my hands full. I have two committees I am chairman of on each of the majors, so I am really short. I am really short, based on what this reorganization group put forward. So it does not bother me any at all. I think that is all anybody should have. So I am for those things.

But under the rules of the Senate it just will not work. Now, if we get 60 votes then you can do anything you want to—that is the rule of the Senate. But I sure do not want the House telling us and voting on our rules. And I can assure you, Madam President, that the House certainly does not want us voting on the rules and procedures of the House. As long as it is that way, then we are not moving in the right direction.

Madam President, I yield the floor.

Mr. BYRD. Madam President, while I oppose this amendment for a number of reasons, I nevertheless recognize the sincerity of its authors, Senators BOREN and DOMENICI, in bringing this amendment to the Senate. They very ably led a delegation of 14 Senators that served on the Joint Committee on the Organization of Congress. For the past year, that Joint Committee spent a great deal of time and effort looking at ways to reform Congress to make it a more accountable and responsible institution. The product of their efforts was referred to the Rules Committee. On June 9 of this year, the Rules Committee, upon which I serve, ordered reported S. 1824, based on the Joint Committee's recommendations. However, there were a number of changes agreed to by the Rules Committee which, I note, have been deleted in the pending amendment. In other words, the authors of this amendment have reversed the decisions reached by the Rules Committee in perfecting the recommendations of the Joint Committee on the Organization of Congress.

The first of these changes made by the Rules Committee, which this amendment reverses, has to do with biennial appropriations. The Joint Committee recommended a biennial budget and appropriations process. During the Rules Committee markup on June 9, I offered an amendment to delete the provisions relating to biennial appropriations, leaving in place a requirement for 2-year budget resolutions and a requirement that all authorization measures be for periods of at least 2 years.

The committee agreed with my amendment to strike biennial appropriations by a vote of 13–3. The case for biennial appropriations has simply not been made. In fact, many of the arguments advanced to justify biennial appropriations are close to specious. And the benefits claimed for biennial appropriations turn out, upon close analysis, to be almost entirely illusory.

We are told that a biennial appropriation cycle will promote more effective oversight. Shifting to a biennial scheme will enable the legislative committee to focus on this function in the second session of each Congress. So runs the argument.

The facts simply do not support the contention that annual appropriations consume an inordinate amount of the Senate's time. For one thing, most of the heavy lifting on appropriations bills is done by members of the Appropriations Committee, not by the legislative committees. Moreover, appropriations bills *per se* are not as a rule subject to long debate and delay on the Senate floor. The data from last year are instructive.

The Senate enacted a total of 19 regular and supplemental appropriation bills last year, including continuing resolutions. Action was completed on six of these on the same day they were taken up. Six others were taken up one day and passed the next.

In four cases, third reading was reached on the third day. Two other bills took the better part of a week and one was cleared on the twelfth day of consideration. In each of these instances, debate was prolonged by amendments dealing with controversial policy issues, rather than funding levels. For example, the Senate revisited both abortion and the Davis-Bacon Act on the Labor, Health and Human Services, Education Act (H.R. 2518).

For fiscal year 1995 appropriations bills, as Senators are aware, six have been signed into law: Legislative, Foreign Operations, Military Construction, Energy and Water, Commerce/Justice, and VA/HUD. Of the remaining seven bills, all except D.C. have been cleared for the President's signature. If we can complete action on the D.C. bill this week, we will have enacted all 13 appropriation bills prior to the beginning of the fiscal year, for only the third time in the last two decades.

It would be ironic if the D.C. appropriation bill were not enacted into law by October 1 because of the adoption of amendments, such as the pending amendment, which, according to its authors, is intended to assist the Congress in completing its appropriations work in a timely and orderly fashion.

The appropriations process is itself an important instrument of congressional oversight. Requiring the agencies of the executive branch to submit justification for and to defend their

programs and budgets every year provides a regular, predictable, and inescapable opportunity to delve into the management, utility, and costs of their activities.

Proponents of biennialism also allege that the annual appropriations cycle creates too much unpredictability in funding and inhibits effective planning by Federal managers. This notion does not hold much water either. True, funding for programs and personnel may be—and probably is—somewhat uncertain from year to year. But this is a consequence not of the schedule of appropriations decisions but of changing priorities and a diminishing discretionary budget.

Moreover, where there are legitimate requirements for multiyear commitments, the annual appropriations cycle can and routinely does accommodate them. Most education programs, for instance, are already forwarded—funded a year in advance. And in virtually every case, appropriations bills contain appropriations that remain available either for more than one fiscal year or until expended. In fact, the General Accounting Office has found that about 70 percent of the accounts on an annual appropriations cycle contain some multiple year or no year funds. So the financial needs of projects or activities extending over several years can easily be met within the framework of annual appropriations.

As for planning, I would suggest that Federal managers and budget analysts already have enough difficulty projecting the costs and scope of the programs and services of their agencies. The formulation of the President's budget under the current cycle begins 15 to 18 months prior to the beginning of a fiscal year. Predicting actual requirements that far in advance is hardly an exact science. Extending the planning horizon another 12 months by moving to a biennial appropriations cycle would not improve the quality of agency estimates or eliminate unanticipated requirements.

It is arguable that even within an ostensibly biennial framework, annual budget submissions would be unavoidable. Changing circumstances and congressional adjustments to the President's budget will have important implications for the second year of the biennial request. It follows that the President will be forced to submit a revised budget for the second year, and the process will simply start over.

It is also argued that a biennial cycle will save executive branch agencies time and resources and enable managers to focus more on administering and improving their programs. This, of course, conveniently overlooks the fact that every department and agency has a specialized budget office primarily responsible for the actual formulation and execution of the agency's budget. Thus, there is a clear division of labor between budgeting and program management. The people who do the actual work on developing and implementing a budget are not the same people who are responsible for managing an agency's programs. Biennial appropriations will not save program managers time nor improve their performance.

In addition to the change in biennial budgeting, the Rules Committee made other significant modifications to the product of the Joint Committee. Several of these changes affect the organization of the Senate and its consideration of legislation. And as I have said, would reverse the decisions of the Rules Committee in marking up S. 1824. For example, the pending amendment would allow the appointment of committee members by majority and minority leaders. The Rules Committee deleted that provision from the Joint Committee's recommendations. The pending amendment would limit the use of proxies in committee to votes where their use would not affect the outcome. The Rules Committee deleted that provision from the Joint Committee's recommendations. Finally, this amendment would charge time on quorum calls to the Member calling for a quorum in postcloture situations. Here again, the Rules Committee deleted that provision from the Joint Committee's recommendations.

I supported the action of the Rules Committee in each of these matters that I have just raised. Therefore, I oppose the pending amendment in these areas and will be pleased to discuss any or all of them further if any Senator wishes to do so.

Another very serious consideration is the response of the House to the pending amendment, if it were adopted. While the Rules Committee in the House has not completed action on a congressional reform package, Roll Call, in its Monday edition, reported that the committee's starting point is the chairman's mark rather than the reform package of the Joint Committee on the Organization of Congress. Chairman MOAKLEY's mark eliminates the Byrd rule and does not include biennial appropriations. An amendment offered, and agreed to, in committee, eliminated the provision providing for biennial budget resolutions.

House members have also expressed a desire to amend Senate rules to eliminate the super-majority requirement for limiting debate. If we open the door to changing House rules on an appropriation bill by the adoption of this amendment, it is likely that the House will respond in kind.

Madam President, the pending amendment deals with matters in the jurisdiction of the Senate Budget Committee and has been offered to legislation not reported from that committee. Under 306 of the Congressional Budget Act of 1974, as amended, it is not in order to consider matters in the jurisdiction of the Budget Committee on a bill not reported from that committee.

Earlier today in debate on this amendment the senior Senator from New Mexico [Mr. DOMENICI] mentioned that his proposed amendment was subject to an "arcane" Budget Act point of order. The Budget Act point of order to which he referred is section 306 of the Congressional Budget Act, as amended. Under that section it is not in order to consider matters in the jurisdiction of the Budget Committee unless it is on a measure reported from the Budget Committee. To overcome such a point of order requires a vote of 60 members duly chosen and sworn.

That point of order is the very same one made against the conference report on the Violent Crime Control and Law Enforcement Act. I would remind my colleagues that the point of order was made by my friend from New Mexico who today expresses outrage at the possibility of the use of the rules to bring down his amendment.

I might add that in the case of the conference report, it was not subject to amendment. The Senator appears to embrace the Budget Act and its protections on one day and rail against them on another. The Senator has the right. The Budget Act is not self-executing. We all may choose to ignore or enforce it.

In this instance, I do not consider the Budget Act point of order to be arcane. This amendment deals with significant changes to the Congressional Budget Act which deserve the careful consideration of members of the Budget and Governmental Affairs Committees. They and their staffs have the necessary expertise to consider all aspects of such important changes to the budget and appropriation processes. But an amendment in disagreement on an appropriation bill is not the place to enact fundamental changes to the budget and appropriations processes. We have to have this bill enacted by tomorrow night if we are to avoid the necessity for a continuing resolution for the operation of the DC government. We do not have time to take amendments such as this to the House, have them consider such massive changes, and resolve those differences to the satisfaction of either the House or Senate in such a short time. For these reasons, I urge Senators to vote against a waiver of the section 306 Budget Act point of order.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FORD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Madam President, a parliamentary inquiry. What is the pending business?

The PRESIDING OFFICER. The pending amendment is the Boren amendment to the Domenici amendment.

Mr. MITCHELL. Madam President, I have discussed the matter with Senators BYRD, DOMENICI, and BOREN. They are in agreement that we can proceed as follows, and this is not a unanimous-consent request. I will describe it first and then present it formally:

That Senator BYRD now be recognized to make a point of order against the amendment; that Senator DOMENICI then be recognized to move to waive the point of order; that there then be 30 minutes of debate, half of which be controlled by Senator BYRD, half by Senators DOMENICI and BOREN; and then the Senate vote on the motion to waive the point of order.

I note the presence of my colleagues and believe that is agreeable to them.

Mr. DOMENICI. I wonder if we might get the yeas and nays as part of the unanimous consent, that it be in order——

Mr. BYRD. No, we do not have a problem with that. Do not include that in the unanimous-consent request.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. OK, make it in order then, to order the yeas and nays on the motion to waive.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Madam President, I ask unanimous consent that Senator BYRD be recognized to make a point of order against the pending amendment; that Senator DOMENICI then be recognized to make a motion to waive the Budget Act with respect to that point of order; that there then be 30 minutes for debate on the motion to waive, equally divided and under the control of Senators BYRD and DOMENICI.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. MITCHELL. Madam President, I now ask unanimous consent that it be in order to request the yeas and nays on the motion to waive.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Madam President, I now ask for the yeas and nays on the motion to waive.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Madam President, Senators then should be aware that a rollcall vote will occur at approximately 5:45 p.m.—that is 30 minutes from now—on the motion to waive the Budget Act, to be made shortly by Senator DOMENICI.

I thank my colleagues for their cooperation. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 15 minutes.

Mr. BYRD. Not at this point, Madam President.

Madam President, the pending amendment deals with matters in the jurisdiction of the Senate Budget Committee and it has been offered to legislation not reported from that committee.

Under section 306 of the Congressional Budget Act of 1974, as amended, it is not in order to consider matters in the jurisdiction of the Budget Committee on a bill not reported from that committee.

I do not intend to speak further on my point of order. Everything I think that needs to be said has already been said in that respect. And so I now make that point of order.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, pursuant to section 904 of the Budget Act, I move to waive the point of order against the Domenici and Boren amendments.

The PRESIDING OFFICER. Under the previous order, there is 30 minutes of debate equally divided: 15 minutes controlled by the Senator from West Virginia and 15 minutes controlled by the Senator from New Mexico.

Who seeks recognition?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. DOMENICI. Madam President, I have on more times than not had the privilege of being on the floor supporting positions of the distinguished chairman of the Appropriations Committee and President pro tempore of the Senate. But in this case, I am on the opposite side. I have expressed myself for maybe 20 minutes this morning on this issue, but I want to take a few minutes to speak to just two parts of the reason that I move to waive. There are two reasons for it.

One, Madam President, while the distinguished Senator from West Virginia is technically correct—that is, if you read the Budget Act, you are supposed to send matters to the Budget Committee that are within its jurisdiction—but in this case, everybody ought to know that we are not talking about a budget, we are not talking about any dollars, we are talking about reform. And in the process of reform, a special committee, bipartisan, bicameral, equal representation from both sides recommended significant changes to the way we do business in the Senate.

Frankly, I believe that more than any other reform around—we consider reform of the system of lobbyists, we look at reform for campaign financing, and we say if we can change some of these things, it will affect how the people think about the governing body, that part called the legislative body. I do not believe anything—anything—will do more to give our people more confidence in us than if we reform the way we do business, to make our actions more responsible, more accountable, and more understandable.

A committee worked for a year making recommendations. It is ironic to this Senator that after all that work—and we were charged with doing this in the name of reform, in the name of streamlining things—that we bring our recommendations to the floor and the first thing we find is that we are right back in the muddle that we have been asked to fix. We are going to get stricken on a point of order because we did not send the recommendations to the Budget Committee to look at.

Frankly, it is very simple for everyone to understand what we recommended that affects the budget. Essentially, we have said we do not need to appropriate every year, do it every 2 years; we do not need a budget resolution every year, do it every 2 years, because a Congress lasts 2 years. Those essentially, and a couple more provisions, are the reasons that the point of order lies, because those should be looked at by the Budget Committee.

Frankly, I believe when you ask this committee to consider reform, it is fair for this committee to at least understand that their work will not be killed on the floor of the Senate pursuant to a procedural matter that just says you have not gone through enough hoops.

So that is the reason that I believe my waiver, which I do not make very often on budget matters, should be granted here today.

Second, there should be no doubt that if the Boren-Domenici amendment is adopted, it is subject to amendment. So if it is not perfect, give it a chance.

The action here this afternoon is to kill it, dead as can be. There will be no reform this year. It is gone, after more than a year of work. This started before the last Presidential election, Madam President. August 1992 was when the Senate asked that we consider serious reform. It will be dead and gone, finished. There will be nothing to vote on and, as a matter of fact, nothing to amend. We will be back on the appropriations bill.

We are merely asking that the amendment not be killed in that manner; that it be permitted to live and see the light of day and be adopted subject to amendment, and then anything anybody wants to do in the next 24, 48 hours, they can try to do to it. Then they can vote no on it if they do not like it. But if you want to streamline the committees, get rid of half the subcommittees, if you want to make our processes streamlined so that you do

not have to appropriate every year and budget every year and you are mandated to authorize every year, thus cutting the work of the Senate in half so you have another half the time to look at the laws you have passed, to do oversight, that is the issue. Can we do more in less time?

I yield an additional minute.

My last comment is I hope the Senators who have listened and their staff who are advising do not really believe we are giving the House in this measure an opportunity to change our rules. I really do not believe that is a valid argument. Actually, we frequently send to the House bills—let me mention them. Gramm-Rudman had changes in our rules. They did not touch them because they do not have any authority to touch them.

We send them in our appropriations bills funding and certain things about our body. Sure, they could amend them. They do not. They leave the Senate alone. We sent them an ethics reform package in a substantive law. They could have changed it. They did not change it because it is our business.

The same thing will apply here. If we adopt the package, when the time comes to amend it, if the sections are not amended, we will not be giving the House an opportunity to amend our rules, and I hope no one will vote against it on that basis. That is not a valid reason to vote against it.

I reserve the remainder of my time.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Of course, the House would have a voice in this matter if it is sent back as an amendment to the pending appropriations bill. I hope the Senator is not trying to tell the Senate that we can change the Senate rules to provide that appropriations bills would be biennial bills and that the House will not do anything on that matter. How are we going to have biennial appropriations bills in the Senate unless the House also has that procedure?

Madam President, let us not kid ourselves. This is an appropriations bill. It is not the proper place for this amendment. I hope we would not have any amendments attached to this bill. We are within striking distance of having all of the appropriations bills passed before the new fiscal year begins. Unless we free this bill, pass it by adopting the conference report, let it go on to the President so he can sign it into law, then not only will the District government have problems but we will have spoiled an excellent chance to show the people of this country that we can pass all of the appropriations bills prior to the beginning of the new fiscal year. We have done that I think twice before in the last 20 years. The last time I believe was 1988. I would like to do it again. So I hope that we will not adopt this amendment and we avoid that by voting down the waiver.

Now, Madam President, my friend—and he is my friend—is critical of this point of order. He says that it would send—that point of order being made because this was not sent to the Budget Committee, and he bemoans the fact that this point of order will kill this amendment, and that therefore a procedural motion will have killed it.

But the same point of order was made on the crime bill conference report. It had to do with the creation of the violent crime reduction trust fund. And, of course, that point of order was not even raised when the bill passed the Senate, at which time my distinguished friend, the Senator from New Mexico [Mr. DOMENICI], and I had some discussion about the fact that a point of order would, indeed, lie against that bill. We both said, or at least I interpreted our discussion as being to the point that crime in this country had reached such proportions that it was perhaps the major issue confronting the people of this country, and we ought to pass the bill and not use a procedural point of order to kill that bill.

I agreed that such a point of order would lie. So no opportunity was taken advantage of at that point. But when the conference report came back to this body, the point of order was made on the other side of the aisle, I believe, against the conference report under 306 of the Congressional Budget Act of 1974.

So now it is said that we should not use that procedure. My friend from New Mexico used it then and defended it then. And he had a right to use it. I am not questioning his right to use it. But he has used the word "ironic." Let me use it. It seems a little ironic to me that my good friend from New Mexico today is assailing in a very mild manner this point of order when he used it when he thought it was to his advantage on a very important bill. And the waiver, I believe, carried by something like 61 votes—carried by 1 vote, I suppose. I mean it was defeated by 1 vote. I believe there were 61 votes. But, anyhow, the waiver carried by 61 votes.

Earlier today, in debate on this amendment, my friend mentioned that this proposed amendment was subject to an arcane Budget Act point of order—arcane. As I have already stated, that same point of order was made against the conference report on the crime bill.

I would remind my colleagues that in the case of the crime bill, it was not subject to an amendment. But on that occasion he embraced it, did he not? He embraced this procedure. So he appears to embrace the Budget Act and its protections on one day and to rail against them on another. That is all right. We all rail a little now and then. The Senator has that right. I do not question his right to do that. But the Budget Act is not self-executing. We may choose to ignore it or we may choose to enforce it. I do not consider the Budget Act point of order to be arcane. I did not say it on that occasion when I opposed the point of order on the crime bill. I did not say that procedure was arcane.

I should also point out that this requirement of 60 votes to waive section 306 of the Congressional Budget Act of 1974, as amended, was added to the Budget Act as a part of the Gramm-Rudman-Hollings Act. The Balanced Budget and the Emergency Deficit Control Act of 1985 was itself an amendment to House Joint Resolution 372, an act increasing the public debt limit. Section 306 would require that original act—the original act included the provision, section 904, that permitted the waiver of any of the provisions of titles 3 and 4 of the Budget Act by a majority vote, and the Gramm-Rudman-Hollings Act changed the requirement for waving section 306 to 60 votes in the Senate.

I think it is a good thing. I think it is a good thing to have that point of order and to require 60 votes to waive it. That change was made in 1985 when my distinguished friend, Mr. DOMENICI, was chairman of the Budget Committee. So perhaps it depends on whose ox is being gored as to whether or not it is a good procedure.

Madam President, I sincerely hope that we can dispose of this amendment, and that we can get on with disposing of the other amendments to amendments in disagreement, pass this bill, send it to the President, and let the American people know that we can indeed do our work on appropriations and do it in an orderly and timely fashion.

I reserve the remainder of my time.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, how much time remains under the control of the Senator from New Mexico?

The PRESIDING OFFICER. Eight minutes and twenty-five seconds.

Mr. DOMENICI. I wonder if the Senator from Oklahoma could leave me 2 minutes and he 6.

Mr. BOREN. Madam President, I will just take 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Madam President, I had the privilege of speaking earlier on the floor on this matter outlining why I feel so strongly that we should not miss this opportunity to bring about real reform for this institution. The work of the Joint Committee on the Reorganization of Congress has had 36 hearings. We heard from 240 witnesses, and our work was completed in an expeditious fashion.

Many Members of the Senate and many Members of the House from both

parties contributed greatly to that process, including the distinguished President pro tempore who lodged this point of order. Let me say that no one understands this institution better, is more knowledgeable of its history and its rules than the distinguished President pro tempore. It is with a great amount of humility that I would rise to oppose him on this particular matter and to urge that the Budget Act be waived so that this package can be considered and adopted.

This is not the ideal way for this matter to be considered. If we had been able to follow an orderly process, if we had the ability to move these proposals through the Budget Committee it would have been far better. If we could have considered this proposed package of reforms as a freestanding matter without having to consider it in this fashion by attaching it as an amendment to amendments in disagreement on the D.C. appropriations bill, certainly that would have been preferable. As I said earlier, it is indeed ironic and perhaps symbolic of the need to reform this institution that the only way we can get a matter of this seriousness, a matter which would be of this much concern to not only Members of this institution but to the American people, the only way we could have it considered is to try to latch on to perhaps the last legislative vehicle available to us in this Congress.

So I regret that we find ourselves having to offer a proposal of this significance to this particular vehicle. This is an opportunity for us to do many things that need to be done if we are to restore that trust that should exist between the American people and Congress as an institution.

Madam President, I spoke of my feelings as I think about leaving the Senate of the United States in just a few days never to be able to return to the floor as a sitting Member as my time of service here comes to an end. I leave with, of course, the pride in having had the opportunity to serve here with reverence for the political process and constitutional process of this country. But I also leave with a great sense of foreboding.

Nothing is more important than that element of trust. When I read polling data that indicates that over 80 percent of the American people no longer feel that this institution represents people like them, cares about people like them, that the Members here do not speak for people like them, I have grave concern about what might happen to the political process in this country. The legitimacy of our whole form of Government rests upon the principle that there will not be taxation or decisions on major policy questions without representation.

And therefore when the people come to feel that this institution has so badly failed them because of flawed rules, flawed process, a flawed manner in which we finance campaigns with more and more money flowing into the process, from special interest groups largely, when they see that we have too many committees and subcommittees so that the Members of this body cannot focus attention on the important issues that should dominate our long-range thinking that prepare us and our country for future challenges which we face, when they see that we are so caught up in busy work with all of these myriad of committees that we have, with a growing burgeoning staff of bureaucracy that finally makes it impossible for us to act, and impossible for the American people to even understand the process to the degree that they can hold Members accountable for their action, Madam President, I believe that there is an urgent need for a change.

I believe that if we fail to act in a positive fashion on major structural reforms in this Congress in this session that we will let down the American people. Here we have an opportunity to do away with unnecessary subcommittees. We have added over the years since 1946 many committees and subcommittees that are not necessary. We have grown from 38 standing committees of the House and Senate now to almost 300 committees and subcommittees. Our staff has grown from 2,000 to almost 40,000, if you count support staff in such agencies as the General Accounting Office as well as counting direct staff which number somewhere between 12,000 and 14,000. Members of Congress have their attention spread very thin. They are trying to serve on the average of 14 committees and subcommittees. They therefore cannot focus time and attention on the problems that need to be solved.

Madam President, this is an opportunity to do something about that process that zaps the energy, strength and effectiveness of men and women who come here wanting to render a public service and give of themselves to make this a better country. If we do not act, who will? How long are we going to wait? We have waited until we now have only a 14 percent approval rate, with only 14 percent of the American people saying they have confidence in Congress as an institution. Will we wait until it is 10 percent, 5 percent? Will we wait until it is 1 percent? We have already waited too long to enact basic reforms. Let us not miss this opportunity.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia is recognized.

Mr. BYRD. Madam President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 5 minutes and 19 seconds.

Mr. BYRD. I thank the Chair.

Madam President, I hope that Members will understand that it is a serious matter to attach this amendment to this bill at this juncture.

At this juncture. First of all, it will result in a continuing resolution in the final analysis, because it would kill the bill. And if the House chose to respond with amendments, which it could very well do, then we might consider the result. While the Rules Committee in the House has not completed action on a congressional reform package, Roll Call in its Monday edition reported that the committee's starting point is the chairman's mark, rather than the reform package of the Joint Committee on the Organization of Congress. Chairman MOAKLEY's mark eliminates the Byrd rule. Both the Senator from New Mexico and I want the Byrd rule. We want that Byrd rule. But if it goes over to the House with this amendment attached to it, then the House will certainly be glad to deal with that.

Chairman MOAKLEY's mark eliminates the Byrd rule and does not include by any appropriations an amendment offered and agreed to in committee eliminating the provision for biennial budget resolutions. So the House would not provide for the budget resolution. I am in agreement for having a biennial budget resolution. House Members have expressed a desire to eliminate the rule for a supermajority requirement for limiting debate. The best protection my friends on the other side of the aisle can have is the rule in this Senate that allows unlimited debate. Sometimes it is called "filibuster," but that is one of the things that is unique about the Senate and makes it one of the most outstanding upper legislative bodies in the world.

House Members want to get rid of the Senate rule and eliminate the supermajority requirement for limiting debate. Instead of 60, they would like to see debate limited over here by a majority, 51 votes, if all Senators are present and voting. So if we open the door to changing House rules on appropriations rules by the adoption of this amendment, it is likely that the House will respond in kind. Do not kid yourself.

Madam President, I hope that the Senators will reject the motion to waive so that this amendment will fall. It is the underlying amendment, and it will carry with it the amendment in the second degree. Then we can get on with our business.

I reserve the remainder of my time.

Mr. DOMENICI. How much time do I have?

The PRESIDING OFFICER. The Senator has 2 minutes 5 seconds.

Mr. DOMENICI. Madam President, first, let me say that the Senator knows that many of the things he just said I agree with. But I really hope that the Senate understands the predicament that we find ourselves in. I did not want to put this amendment to offer the reform package on an appropriations bill. When and where would I

offer it? There is no time and no place, and we are ready to go home. I do not know if we are coming back in a lame duck session. I see somebody here who may have more to say about that than any of us. Clearly, there was no intention to even let the Senate consider this. So we had no alternative. We tried it here. I would prefer to do it in a much more appropriate manner with a week's debate with a freestanding bill.

Second, if I used the word "arcane," I say to my friend from West Virginia that I meant arcane in its application, not arcane in that the rule is arcane. But, frankly, can the Senate on its own decide whether it wants 2-year budgeting and 2-year appropriations? Can we decide that on our own, or must we kill this bill and send it to the Budget Committee so that they can consider that? That is the issue. It is not something that is difficult, some budgetese, some hard outyear funding. The issue is that they are supposed to look at it in the Budget Committee because it has matters in the Budget Act. The matters essentially are: Do you want 1-year appropriations and to do it every single year? Or do you want to do it every 2 years? Do you want an annual resolution on the budget or every 2 years? You can vote on that today, instead of using a rule that would say send it back to the Budget Committee for legislation. I do not have any doubt that this bill deserves much more debate. Neither do I have any doubt that reform of the U.S. Senate by way of fewer committees, and all the other things we have been talking about, is dead if you give to this bill the death knell of a point of order. I think this is the right time to waive and is appropriate under the law. I hope the Senate will waive the Budget Act and proceed to debate the bill.

Mr. BYRD. How much time do I have?

The PRESIDING OFFICER. The Senator has 1 minute 55 seconds.

Mr. BYRD. Madam President, while I oppose this amendment for a number of reasons, I nevertheless recognize the sincerity of its authors, Senators BOREN and DOMENICI, in bringing the amendment to the Senate. I know they are sincere about that. They very ably led a delegation of 14 Senators that served on the Joint Committee on the Organization of Congress. And for the past many months, that Joint Committee spent a great deal of time and effort looking at ways to reform Congress to make it a more responsible institution.

There are many things in their product that I can support, and there are some features of it that I would suggest be changed. There are other things I would suggest be added. But this is not the time for that. I hope that Senators will vote against the motion to waive and free the appropriation bill for final action and signature by the President.

Mr. SIMPSON. Madam President, I rise to speak very briefly regarding the amendment by Senators DOMENICI and BOREN. These superb colleagues consistently demonstrate what the term statesmanship truly means. I will take a more extensive opportunity prior to the end of this Congress to pay tribute to Senator BOREN, and to my other retiring colleagues. But today, I want to thank him for what he has tried to accomplish with this legislation. Senator BOREN has a passion for bipartisanship, and I am proud to have come here with him, and to have served with him. And there is no more solid, dedicated, hard-working, conscientious Member of this body than Senator DOMENICI. The brokerage house commercial could have been about him—when he talks people listen, and if they don't—they should.

Any committee established to reform an institution which is over 200 years old has a formidable, uphill task. It is inescapable that if such a committee does its work it will change the status quo and negatively impact the jealously guarded power of some. It is also true that if the recommendations of the committee are at all comprehensive, no one will totally embrace each of its provisions.

But the debate on the issue of congressional reform must proceed, and I commend the sponsors of this amendment, which incorporates the recommendations of the Joint Committee on the Organization of Congress. Accordingly, I intend to vote with Senators DOMENICI and BOREN on any procedural motion which furthers the debate on this issue. The recommendations of the committee were thoughtfully reached over a great deal of time, and in consideration of painstakingly detailed testimony. Viewed in their totality, I agree with most of the recommendations of the Joint Committee.

I particularly applaud their efforts to cut half the subcommittees in the Senate, to cut Senate committee assignments, to cut Senate staff, to go to a 2-year budget cycle, to establish a regular review of support agencies like GAO, to require quarterly deficit reports, and to require unused committee or office personal office funds to go to deficit reduction, and not back into the "congressional pot."

I urge my colleagues to join me in waiving the point of order to this amendment.

Mr. HATFIELD. Madam President, I support congressional reform that will make the legislative process more efficient and which will make the Senate more responsive to the people that we serve. The matter before us was fully debated in the Rules Committee, on which I serve. This amendment in bill form was debated in the Rules Committee and amended by that committee. Unfortunately the changes made by the Rules Committee to that bill have not been included in this amendment. I cannot support this effort to circumvent the committee process where debate on this amendment has occurred and produced a legislative product, thus I cannot support this amendment.

Mr. BAUCUS. Mr. President, I rise today in opposition to the Domenici amendment to the amendments in disagreement to the District of Columbia Appropriations Act. This amendment would attach the so-called congressional reform package to the appropriations for the District of Columbia.

Mr. President, I would begin by saying that congressional reform—true reform—is in order. My colleagues have indicated their desire for reform. The American public has called for reform. President Clinton and Vice President GORE were elected on a platform of reform. Unfortunately, this is not reform.

Many times I have been dismayed by the pace of this body. It can frequently move too slow. However, the procedure by which a bill becomes law necessarily takes time. There are many opportunities for public input, committee review, and debate. Sadly, this effort at reform has by-passed much of that process. That is simply inappropriate.

Substantively, it is true that this amendment contains improvements. It also has numerous flaws. First it tinkers with the very rules which differentiate this body from the House. Second, it would eliminate the Joint Committee on Taxation—a step which would dramatically reduce the efficiency of our budgeting process. As a resource both the House and the Senate, Joint Tax provides invaluable and timely technical assistance and independent revenue estimates.

And finally, Mr. President, this amendment, jeopardizes the ability of this Senator to serve all his constituents through a dramatic change in committee selection.

If this amendment were enacted, I would be bumped from the Senate Committee on Agriculture, Nutrition, and Forestry. In 1989 I fought hard to get on that committee to represent Montana's largest industry more effectively. This position has been very important as I addressed the needs of Montana's agriculture and forestry industries.

As we enter 1995, it is likely that major farm legislation will be considered and I intend to see that farm policy is crafted which will meet the needs of this important Montana constituency. I cannot stand idly by as this proposal jeopardizes my ability to serve this group.

I will continue to fight for Montana as long as I serve in this body. And in this instance, that means I must vigorously oppose this amendment and I urge my colleagues to do the same.

Mr. President, I yield the floor.

Mr. BYRD. I yield back any time I may have.

The PRESIDING OFFICER. All time has been consumed.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Virginia [Mr. ROBB] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 58, nays 41, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—58

Bennett	Feingold	Nickles
Biden	Gorton	Nunn
Bingaman	Graham	Packwood
Boren	Gregg	Pressler
Bradley	Hatch	Pryor
Brown	Hutchison	Reid
Bryan	Jeffords	Roth
Bumpers	Kassebaum	Sasser
Burns	Kempthorne	Shelby
Chafee	Kennedy	Simon
Coats	Kerry	Simpson
Cohen	Kohl	Smith
Coverdell	Lautenberg	Specter
Craig	Levin	Thurmond
D'Amato	Lieberman	Wallop
Danforth	Lott	Warner
Dole	Lugar	Wellstone
Domenici	Mack	Wofford
Durenberger	McCain	
Faircloth	Murkowski	

NAYS—41

Akaka	Feinstein	Mathews
Baucus	Ford	McConnell
Bond	Glenn	Metzenbaum
Boxer	Gramm	Mikulski
Breaux	Grassley	Mitchell
Byrd	Harkin	Moseley-Braun
Campbell	Hatfield	Moynihan
Cochran	Heflin	Murray
Conrad	Helms	Pell
Daschle	Hollings	Riegle
DeConcini	Inouye	Rockefeller
Dodd	Johnston	Sarbanes
Dorgan	Kerrey	Stevens
Exon	Leahy	

NOT VOTING—1

Robb

The PRESIDING OFFICER. On this question, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained. The amendment falls.

Who seeks recognition? The Senator from Maine is recognized.

AMENDMENT NO. 2594 (TO HOUSE AMENDMENT TO SENATE AMENDMENT NO. 6), AS MODIFIED

Mr. COHEN. Madam President, I call for the regular order, please.

The PRESIDING OFFICER. The regular order? Is the Senator seeking to call up his amendment?

Mr. COHEN. I am.

Mr. BURNS. Madam President, I suggest the Senate is not in order.

The PRESIDING OFFICER. The Senator from Montana is correct. Does the Senator from Maine wish to be recognized?

AMENDMENT NO. 2594 (TO HOUSE AMENDMENT TO SENATE AMENDMENT NO. 6), AS MODIFIED FURTHER

Mr. COHEN. Madam President, I wish to further modify my first-degree amendment.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The further modification to the amendment (No. 2594) is as follows:

At the appropriate place, insert the following new subtitle:

"Subtitle".

Mr. COHEN. If I might explain very briefly, Madam President?

The PRESIDING OFFICER. The Senator may explain, and I ask Senators who are conversing to my left, please withhold.

Mr. COHEN. Madam President, the modification I sent to the desk was simply a technical one in nature. It did not alter the substance of the amendment that I offered earlier today that was amended by the Senator from New Mexico [Mr. DOMENICI].

Basically, we are back to discussing health care fraud and, as we discussed it at length yesterday, this is an opportunity for us to go on record trying to pass legislation that will save billions of dollars that are currently being wasted through fraud and abuse in the health care system.

This is an amendment which is supported by virtually everyone.

Mr. FORD. Madam President, the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct.

The Chair asks Senators to the left of the well to also withhold their conversation.

Mr. FORD. Madam President, will the distinguished Senator from Maine allow me to ask him a question?

Mr. COHEN. I yield for a question.

Mr. FORD. The Senator has an amendment in the second degree to his amendment? So we cannot vote on the Senator's amendment; we would have to vote on the amendment to his amendment, and that amendment is the so-called Dole health care bill?

Mr. COHEN. No. Senator DOMENICI had offered an amendment in the second degree to mine, which is not the Dole health care bill.

Mr. FORD. What is the amendment, then, in the second degree?

Mr. COHEN. Simply a change in date.

Mr. FORD. A change in date? Is that all? What change in the date would that be, then? It is identical? You modified his amendment as you modified yours, except for the date?

Mr. COHEN. Except for the date; 1 day's difference.

Mr. DOMENICI. Yes.

Mr. FORD. The Senator modified the amendment of the Senator from New Mexico? I did not think you had a right to modify his amendment.

Mr. COHEN. No, I modified my amendment, the first-degree amendment, that he then amended in the second degree. I modified the underlying amendment.

Mr. FORD. We are trying to unravel this Christmas tree a little bit. I want to be sure we are not thinking we are going one route rather than another, and I want to be sure we understand—at least that this Senator understands—what you are trying to do.

Mr. COHEN. The current situation is the amendment I have currently offered dealing with health care fraud was amended in the second degree by Senator DOMENICI, that second-degree amendment, pending as well, and that deals solely with the subject of health care fraud.

Mr. FORD. And you modified yours on two separate occasions?

Mr. DOMENICI. I might say, when I offered the modification, I say to my friend, I did not change everything in his amendment. He is changing something in his amendment that remained there. I had not touched that and he found an error in that, in the underlying amendment.

Mr. FORD. So actually your amendment is not the same as the amendment in the first degree?

Mr. DOMENICI. That is correct.

Mr. FORD. So if we vote on his, it would change your amendment.

I thank the Senator.

Mr. WOFFORD. Parliamentary inquiry.

The PRESIDING OFFICER. The Chair will recognize the Senator from Pennsylvania for a parliamentary inquiry, but Senators need to address each other through the Chair, in the third person.

The Senator from Pennsylvania.

Mr. WOFFORD. Parliamentary inquiry, Madam President. This Senator needs to understand whether the present parliamentary situation is such that the amendment I put forth has now been stricken from the Cohen-Domenici amendment. Is that correct? Is that correct, Madam President?

The PRESIDING OFFICER. The Senator from Maine needs to clarify the substance of his amendment. That should answer the question of the Senator from Pennsylvania.

Mr. COHEN. Madam President, I would like to clarify it. Earlier today, I took the floor to accept the amendment of the Senator from Pennsylvania. I then sent a modification to the desk, and at that point, Senator DOMENICI then amended the proposal in the second degree. So that effectively wiped away the amendment of the Senator from Pennsylvania. That was done earlier today, and not through the modification I just offered. The modification I just offered to my first-degree amendment was in the nature of a technical amendment. It only changed simply a word dealing with subtitles.

Mr. WOFFORD. Parliamentary inquiry. Madam President, would my colleague from Maine clarify whether the

amendment that was just amended does not still include my amendment, before his technical modification just now?

Mr. COHEN. It did not. It does not. By virtue of having accepted your amendment earlier today, I believe that the parliamentary situation was that your amendment was stricken at that time.

Mr. WOFFORD. Then, Madam President, the parliamentary situation is that my amendment can be reoffered when I am recognized duly after this amendment has been dealt with?

Mr. COHEN. Not on this amendment, but an amendment in disagreement, yes.

Mr. WOFFORD. The Senator still has his right to put his amendment to the Cohen amendment before it is——

Mr. COHEN. No.

Mr. WOFFORD. Could the Parliamentarian——

The PRESIDING OFFICER. Could the Senator repeat his question to the Senator from Maine, the Chair was consulting the Parliamentarian because this is becoming a complicated situation.

Mr. WOFFORD. For this Senator, too. I would like a parliamentary clarification as to whether I would have the right to put my amendment forth to the Cohen amendment before the Cohen amendment is adopted. I look forward to voting for the Cohen amendment, but I also look forward to having a vote on my amendment.

The PRESIDING OFFICER. There is currently a second-degree amendment pending to the Cohen amendment. When that second-degree amendment is disposed of, the Cohen amendment could be further amended.

Mr. WOFFORD. Thank you, Madam President.

Mr. COHEN. But then it has to dispose of the Domenici second-degree amendment.

The PRESIDING OFFICER. The Senator is correct. The Chair might note to the Senator from Maine, that microphone is not working as well to hear the amplification of his remarks.

Mr. COHEN. I will try and hold it up as close as possible.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Does the Senator from Maine have the floor?

Mr. COHEN. I do.

Mr. BUMPERS. Will the Senator yield to me for 30 seconds to speak on an unrelated item?

Mr. COHEN. Without losing my right to the floor, certainly.

The PRESIDING OFFICER. Without objection, the Senator from Arkansas may proceed.

ELATED AT DISNEY'S DECISION

Mr. BUMPERS. Madam President, I thank the Senator very much. I simply want to say when Disney decided to build their theme park, Disney America, in this northern Virginia area just west of here, I took strong exception to that. I held a hearing in my Subcommittee on National Parks and Public Lands, and virtually every historian in the country came in to testify against that proposal.

I was strongly opposed to it, but I recognized there was very little Congress could do about it. But I rise today, Madam President, to say I am elated at Disney's decision, and I want to express my gratitude to them for having made that decision. I think it is going to be good for Disney and it is certainly good for America.

While I was strongly opposed to their decision, I now applaud them for making what I consider to be a very fine decision, and I do not think they can help but enhance their image with that decision.

I thank the Senator from Maine.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Madam President, I will not take a good deal of time this evening. We have debated this issue for hours. It is strange because there is no debate. There has been no opposition to this amendment, no expressed opposition, I should say.

This is an amendment designed to deal with the problem of widespread health care fraud and abuse. The numbers are staggering. I mentioned them time and time again. GAO estimates that we are losing $100 billion a year, which works out to $275 million a day, and $11.5 million an hour. We have been standing idly by. We do not have an effective mechanism to begin to cope with the volume of fraud that is currently being perpetrated.

This amendment, in and of itself, will not and could not hope to prevent all the fraud that is and will be perpetrated against the American taxpayers, but it is something that everyone agrees is desperately needed to at least arm our prosecutors, the FBI, the Justice Department, and the Health and Human Services inspector general. They need this tool in order to more effectively combat those who are committing fraud against the American people.

We know that this provision was in the President's health care proposal. It was in Senator MITCHELL's health care proposal. It was in Senator DOLE's health care proposal. It was in the so-called bipartisan mainstream coalition proposal. So no one is in disagreement with the need and the necessity for this legislation.

Earlier in the week, I sought to attach it to the Health and Human Services appropriations bill. I yielded to the importuning of the Senator from Oregon who asked me to defer consideration of this amendment and to put it on DC appropriations. Which I did.

Portions of this same amendment were attached to the crime bill which we passed over a year ago in the Senate—the title XVIII provisions that are contained in this amendment. The House of Representatives stripped that out of the crime bill because they argued this really belongs on health care reform. I think it belongs on a crime bill because crimes are being committed against the American people. They said, "No, put it on health care reform."

It is obvious why they said that. They wanted it on health care reform because they looked at the numbers that say $100 billion. So if we could make headway in combating fraud and abuse, we would save substantial money maybe billions of dollars, and I think the President hoped that those moneys that were saved could then be used to pay for an expansion of health care coverage for those who are currently uninsured.

But we do not have a health care reform bill this year. We are not likely to have one in the waning days of this session. So we are faced with the prospect now of another year having elapsed and no statute on the books which the Justice Department can go to to prosecute individuals who are robbing us and bleeding us blind.

If we wait until next year, we will have potentially lost another $100 billion. If we come back in January, we will not begin our session until the latter part of January. We will then go out on the Lincoln Day recess, we will come back some time in late February or early March to begin substantive deliberations again. Hearings will have to be held in the various committees. Labor, Education, Finance, perhaps the Aging Committee, other committees with overlapping jurisdiction—all will have to hold their hearings all over again. Legislation will finally be brought to the floor. We will debate that at length, hopefully pass some legislation, and then await House action, which will go through the exact same process.

So we are looking at months into next year before we can hope to pass any kind of health care reform, which would include a provision dealing with health care fraud.

Madam President, I do not think we can afford to wait. Since last year when we passed the provision dealing with title XVIII to the crime bill, we

have lost roughly $85 billion in that period of time. I do not think the American people will tolerate us failing to take action. They did not apparently want us to take action on a health care reform package. That is understandable because of so much complexity associated with the bill, so much confusion about exactly what the administration or we might be up to. But this is something that is pretty clear. There is no confusion about this. There is no lack of clarity on what has to be done and what this legislation will do.

So, Madam President, it is my hope that we will approve the amendment that I have submitted, as amended by Senator DOMENICI, and at least have the opportunity to go on record to say that we think this has to stop, this is something that is not a matter of debate or dissension within the membership here.

It is something we should move on quickly and can move on quickly and at least put the question to the House of Representatives as to whether they want to wait another year before we have any kind of meaningful legislation dealing with fraud.

Madam President, I yield the floor.

Mr. BYRD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WOFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Pennsylvania [Mr. WOFFORD].

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995, DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994—CONFERENCE REPORT

The Senate continued with the consideration of the amendments in disagreement to the conference report.

AMENDMENT NO. 2595 TO AMENDMENT NO. 2594

Mr. WOFFORD. Mr. President, I just want briefly to make clear where we are and what my intentions are in regard to the amendment that I have been putting forth.

I want to stress once again that I strongly support Senator COHEN's amendment relating to fraud and abuse. It is, as he said, in all of the bills that we have been working on not idly but hard. It is also in the 7 points that I proposed as a small step to Senator MITCHELL and Senator DOLE a little while ago.

I look forward to voting for it. I do not know what its fate will be in the House. But I look forward very much to working with the Senator from Maine to see that it becomes a reality.

I also want to make sure, to the best of my ability, that we have an up-or-down vote in due course on my amendment which under the procedural amendments that we had today is no longer before this body but which will be once again before this body when I get recognition to move it in due course, which I will do, because I do believe that Members of Congress should not take from the taxpayers the kind of affordable private health insurance that they will not guarantee for the taxpayers, their employers.

I do not need to restate the case tonight. When we come to an up-or-down vote, before that we will have a chance to hear any other views, but it seems to me that it is a self-evident truth that what is so good for us, and it is a good plan, the last thing I ever intend to do when I came here is to take that plan away from Members of Congress, but I think it is a self-evident truth that if we are not willing to take action to assure the American people the kind of choice of private health insurance guaranteed with our employer, the taxpayers, contributing the majority of our health insurance, then I think we should not be requiring the taxpayers to pay for our health insurance.

I think it is a proposition that is of such basic fairness that it will be very difficult to explain to people why we will not take action, but we are going to insist upon holding to the benefits that we have established for ourselves.

So I look forward to that debate and an up-or-down vote.

I yield the floor.

Mr. KOHL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. KOHL. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

OFFICE OF INTERNAL OVERSIGHT SERVICES AT THE UNITED NATIONS

Mr. PRESSLER. Mr. President, I come to the floor today to raise my continued concerns about the United Nation's inadequate attempt to create an inspector general office. As my colleagues know, I repeatedly have fought for the establishment of an independent reform office at the United Nation. Last January, my colleagues overwhelmingly supported me during floor debate on the Foreign Relations Authorization Act by voting to make U.S. contributions to the international body contingent upon the United Nation's creation of an independent inspector general office. In April, the President signed the Foreign Relations Authorization Act into law, making binding my amendment—known as section 401.

As a result of section 401, the President is required to certify to Congress that all procedures are in place at the United Nations regarding the establishment of the independent inspector general office. In July, my colleagues again supported me by adopting my amendment to the Commerce, State, Justice appropriations bill. This amendment required the President to notify Congress 15 days prior to his certification pursuant to section 401. I offered this amendment to ensure Congress the ability to comment on the proposed Presidential certification. That, Mr. President is why I am here today.

One week ago, Ambassador David Birenbaum, U.S. Representative to the United Nations for Management and Reform, met with my staff to discuss the administration's willingness to certify that procedures are in place at the United Nations. The administration is prepared to certify, shortly, that the United Nations is prepared to clean up its act. I am not completely convinced the recently created Office of Internal Oversight Services [OIOS] will have the independence necessary to function effectively. The Department of State is willing to certify that all procedures are in place and in compliance with section 401. I fear the OIOS does not have full independence to conduct needed audits and investigations. I am disappointed the United Nations is not willing to construct a truly independent and functional office.

I am not attempting to bash the United Nations, nor am I attempting to discredit Ambassador Albright's efforts to fight U.N. waste, fraud, and abuse. I simply do not believe that the OIOS is fully independent. Without true independence, the reform office will be a sham.

Two key components of section 401 are the requirements for procedural independence and whistle blower protection. Neither mandate appears to be fully operational in the OIOS. First, the OIOS merely will inherit the budget and the staff from the current U.N. Office of Inspections and Investigations. In other words, the newly created OIOS will be staffed with the same U.N. bureaucrats—bureaucrats who

have done little to conduct investigations and audits for the Office of Inspections and Investigations. Additionally, the OIOS cannot submit its budget directly to the General Assembly for approval. Rather, it must be approved by the Secretary General before the General Assembly has the opportunity to vote on it. Is this independence? To me it sounds more like dependence on the Secretary General. Furthermore, the OIOS currently has a scant $12 million budget for the biennium. Given the monumental size of the overall U.N. budget—including both the regular budget and peacekeeping assessments—$12 million is a pittance, a mere drop in the bucket.

Second, in order for the OIOS to function, U.N. employees must feel free to comment on acts of malfeasance. While the OIOS will have some procedures in place to accommodate the confidentiality of whistle blowers, there is a potential for reprisal against those employees whose information turns out to be false. It will be left up to the U.N. bureaucrats to determine whether false information had knowingly been provided. This procedure certainly will not serve as an incentive for U.N. staff to disclose information.

Another issue of contention is the fact that UNICEF and UNDP will not be subject to OIOS audits and investigations. Certainly, these U.N. appendages should be subject to the same budget and management scrutiny as the rest of the U.N. Secretariat. The OIOS does not have the reach necessary to uncover fully the rampant cases of U.N. malfeasance.

While I applaud the efforts of the United Nations and the administration, I feel the administration has missed a monumental opportunity. Once U.S. contributions begin flowing into the United Nations after formal certification, what incentive will remain for the international bureaucracy to put their house in order? The United Nations has dressed enough windows. It is time for genuine reform. It is time for the United Nations to clean up its act.

CONFERENCE REPORT ON H.R. 6, IMPROVING AMERICA'S SCHOOLS ACT OF 1994

Mr. LAUTENBERG Mr. President, I rise to congratulate the conferees on the elementary and secondary education bill for keeping the tough gun-free school language that the Senate unanimously passed earlier this year. There were rumors floating around recently that this language, which requires that all schools adopt a zero tolerance for guns, was going to be severely weakened by the conferees.

As many of my colleagues know, the Senate also unanimously passed this provision as a 1-year amendment to Goals 2000 bill earlier this year. This provision requires every school district receiving Federal funds to adopt a policy of expelling a student for 1 year if he or she carried a gun into school. This was a tough provision but it is time to be tough. Now that the conferees on the Elementary and Secondary bill have adopted it, it will become permanent law.

Mr. President, we must have zero tolerance for guns in our schools. Unfortunately, many children in our society fear walking around in their own neighborhoods. They are afraid of the gun violence that is plaguing our country. It is shame that children are afraid in their own communities and homes. We must do everything we can—put more police on the street, tighten controls on guns, get tough on criminals and give our young people positive reinforcement—to make our cities and towns safer.

But there is one place where a child should be absolutely safe—never afraid of gun violence—and that is at school. A school building must be a safe haven for all of our children. They should feel totally secure at school, so that they can devote all of their attention to learning.

However, if children attend school and fear for their lives they will not receive a high-quality education. If they do not get an excellent education, they will not get good jobs. And if they do not get good jobs they will likely live in poverty and be more likely to commit crimes.

We can break this cycle if we start by making our schools completely safe.

Mr. President, the problem of bringing guns to school is not a minor one. According to the National Education Association and the National School Boards Association, an estimated 135,000 guns are brought into our Nation's schools every day. And since 1993, there have been at least 35 deaths and 94 injuries that resulted from gun violence in our schools.

Mr. President, this is totally unacceptable. I am pleased that the conferees retained this language. Our position should be loud and clear—no guns in our schools, period.

MESSAGES FROM THE HOUSE

At 12:37 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4650) making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

At 5:31 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1970. An act to authorize the Secretary of Agriculture to reorganize the Department of Agriculture, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 349) to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes.

ENROLLED BILLS SIGNED

At 7:22 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4230. An act to amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

H.R. 4539. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1995, and for other purposes.

H.R. 4602. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1995, and for other purposes.

H.R. 4650. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3360. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the National Technical Information Service for fiscal year 1993; to the Committee on Commerce, Science, and Transportation.

EC-3361. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on First-of-a-Kind Engineering Program for commercialization of Advanced Light Water Reactor Technology; to the Committee on Energy and Natural Resources.

EC-3362. A communication from the Secretary of Energy, transmitting, pursuant to law, the report entitled "Superfund Costs Claimed by the Department of Energy Under Interagency Agreements with the Environmental Protection Agency For Fiscal Year 1993"; to the Committee on Environment and Public Works.

EC-3363. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice of a certification relative to the United Nations agency or U.N. affiliated agencies; to the Committee on Foreign Relations.

EC-3364. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report relative to commercial disputes in Saudi Arabia; to the Committee on Foreign Relations.

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EC–3365. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the reports and testimony for August 1994; to the Committee on Governmental Affairs.

EC–3366. A communication from the Acting Archivist of the United States, transmitting, pursuant to law, notice relative to an improperly alienated federal record; to the Committee on Governmental Affairs.

EC–3367. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report entitled "Family Planning and Five Year Plan" for fiscal years 1991 and 1992"; to the Committee on Labor and Human Resources.

EC–3368. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report entitled "Center for Disease Control and Prevention Plan For Preventing Birth Defects"; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 338. A bill to amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes (Rept. No. 103–387).

By Mr. GLENN, from the Committee on Governmental Affairs, without amendment:

H.R. 2194. A bill for the relief of Merrill Lannen.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 265. A resolution to express the sense of the Senate concerning District Council elections in Hong Kong on September 18, 1994.

S. Res. 270. A resolution to express the sense of the Senate concerning U.S. relations with Taiwan.

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 2352. A bill to amend the Public Health Service Act to reauthorize certain programs relating to the Substance Abuse and Mental Health Services Administration, and for other purposes.

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. 2475. An original bill to authorize assistance to promote the peaceful resolution of conflicts in Africa.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Robert B. Fulton, of Pennsylvania, to be an Associate Director of the United States Information Agency.

Cecil James Banks, of New Jersey, to be a Member of the Board of Directors of the African Development Foundation for a term expiring November 13, 1995.

Geraldine A. Ferraro, of New York, for the rank of Ambassador during her tenure of service as the Representative of the United States of America on the Human Rights Commission of the Economic and Social Council of the United Nations.

Patricia Hill Williams, of New York, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 2000.

William Hybl, of Colorado, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1997.

Vonya B. McCann, of Maryland, for the rank of Ambassador during her tenure of service as Deputy Assistant Secretary of State for International Communications and Information Policy.

Walter R. Roberts, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring April 6, 1997.

Patrick J. Leahy, of Vermont, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Madeleine Korbel Albright, of the District of Columbia, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

David Elias Birenbaum, of the District of Columbia, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Frank H. Murkowski, of Alaska, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Karl Frederick Inderfurth, of North Carolina, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Edward William Gnehm, Jr., of Georgia, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Victor Marrero, of New York, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

David George Newton, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Yemen.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Nominee: David George Newton.
Post: Sanaa, Yemen.
Contributions, Amount, Date, Donee.
1. Self, David G. Newton, None.
2. Spouse, Christa M. Newton, None.
3. Children, and Mark A. Newton, Lesley C. Newton, none.
4. Parents, Charles P. Newton, deceased 1975, Gladys E. Newton, deceased 1978.
5. Grandparents, George H. Newton, deceased 1924, Martha Paul Newton, deceased December 1951. Frederick S. Moore, December 1946, (spouse) Moore December 1942.
6. Brothers and spouses, none.
7. Sisters and spouses, Martha L. Luchsinger, Juan Luchsinger, none.

Robert Edward Service, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Paraguay.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Nominee: Robert Edward Service.
Post: Asuncion, Paraguay.
Contributions, amount, date, donee.
1. Self, Robert Edward Service, none.
2. Spouse, Karol Christine Service, none.
3. Children, Jennifer L. & John T. Service, none.
4. Parents, John S. and Caroline Service, $3,037, 1/90–5/94, various (see itemized list attached).

Political contributions by John S. Service, 01–01–90 to 06–01–94.

3–4–90 Council for a Livable World	$50
3–4–90 Democratic Senate Campaign Committee (DSCC)	25
3–4–90 Calif. Demo. Victory Fund	30
4–27–90 Independent Action	40
7–9–90 Common Cause	25
7–9–90 DSCC	25
7–30–90 Common Cause	50
8–17–90 Democratic National Committee	20
9–10–90 Democratic National Committee	25
9–26–90 Harvey Grant for Senate	30
10–2–90 Nat. Com. for Effective Congress (NCEC)	50
12–10–90 Dem. Cong. Campaign Committee (DCCC)	30
1–17–91 Council for Livable World	30
1–17–91 Demo. National Committee (DNC)	20
1–17–91 Americans for Democratic Action (ADA)	50
2–28–91 Independent Action	40
2–28–91 DSCC	40
2–28–91 NCEC	50
8–30–91 Council for Livable World	35
10–3–91 DNC	35
11–11–91 ADA	30
11–11–91 Cal. Demo. Victory Fund	30
1–8–92 Independent Action	40
1–8–92 Ron V. Dellums	25
1–8–92 NCEC	50
1–8–92 DSCC	25
1–8–92 DCCC	30
4–23–92 Council for Livable World	50
7–20–92 ADA	50
7–20–92 Council for Livable World	50
7–20–92 Common Cause	50
7–20–92 DSCC	25
7–20–92 Clinton for President	50
7–20–92 Calif. Demo. Party	30
11–19–92 Independent Action	40
1–6–93 Independent Action	40
1–16–93 DNC	50
1–16–93 ADA	40
4–12–93 Independent Action	40
4–12–94 NCEC	50
4–20–93 DSCC	25
5–6–93 DCCC	30
6–30–93 Concord B Coalition	50
7–17–93 Common Cause	50
9–23–93 AFSA Legislative Action Fund	25
1–22–94 Independent Action	40
2–1–94 ADA	45
2–1–94 Concord Coalition	50
4–6–94 DCCC	45
4–6–94 DNC	50
4–6–94 Calif. Demo. Party	30
4–6–94 Common Cause	20
4–6–94 Concord Coalition	50
4–6–94 NCEC	50
4–6–94 Independent Action	40
Political contributions of Caroline S. Service, 01–01–90 to 07–01–94.	
1990 Congressional Agenda	120

1991 Congressional Agenda	120
1992 Congressional Agenda	120
1993 Congressional Agenda	120
1994 Congressional Agenda	60
3-7-90 DNC	30
7-5-90 DNC	25
9-12-90 NOW Pol. Action Committee	25
10-1-90 DNC	30
11-2-90 Calif. Demo. Victory Fund	20
4-4-91 DNC	15
7-11-91 Cal. Demo. Victory Fund	52
10-30-91 DNC	50
1-13-92 DNC	30
3-29-92 DNC	25
10-9-92 DNC	50
3-17-93 DNC	50

5. Grandparents, Edward and Katherine Schulz, Robert and Grace Service, (deceased).

6. Brothers and spouses, Philip M. & Kiisa Service, none.

7. Sisters and Spouses, Virginia & Garth P. McCormick, none.

Peter Jon de Vos, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Costa Rica.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Nominee: Peter Jon de Vos.

Post: U.S. Ambassador to Costa Rica.

Contributions, amount, date, donee.

1. Self, none.

2. Spouse, none.

3. Children and spouses, none.

4. Parents, Paul Louis de Vos, (deceased), Elizabeth Suzanne Towers, none.

5. Grandparents, (deceased), none.

6. Brothers, none.

7. Sisters, Gretchen Banks, Lurline de Vos, none.

Gabriel Guerra-Mondragon, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is completed and accurate.

Nominee; Gabriel Guerra-Mondragon.

Post: U.S. Ambassador to Chile.

Contributions, amount, date, donee.

1. Self, see attachment.

February 12, 1991, Hispanic PAC USA Inc.	$500.00
January 22, 1992, Clinton for President	1,000.00
January 28, 1992, Committee to Re-Elect Nydia Velazquez	200.00
March 7, 1992, Becerra for Congress	100.00
June 3, 1992, Becerra for Congress	100.00
May 26, 1992, Hispanic PAC USA	500.00
August 4, 1992, Sosa for Congress	100.00
October 2, 1992, Bustamante for Congress Committee	150.00
February 2, 1993, Friends of Paul McHale Debt Retirement	200
December 2, 1992, Committee to Elect Nydia Velazquez	250.00
February 2, 1993, Friends of Paul McHale Debt Retirement	200.00
August 10, 1993, Transportation Communications International Union	60.00
March 15, 1994, Lucille Roybal-Allard for Congress	75.00
April 12, 1994, Committee to Re-Elect Esteban A. Torres	1,000.00
May 3, 1994, Chief Deputy Whip's Fund	500.00

2. Spouse, none.

3. Children and spouses, none.

4. Parents, Gabriel Guerra-Mondragon, deceased, none.

5. Grandparents, Carmen Casalduc, deceased, all four, none.

6. Brothers and spouses, none.

7. Sisters and spouses, Carmen Guerra-Mondragon, Elliott Holt, none. Maria Guerra-Mondragon, Herman Colberg, none.

Jerome Gary Cooper, of Alabama, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Jamaica.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, Donee.

1. Self, none.

2. Spouse, none.

3. Children and spouses, Patrick Cooper, Joli C. Cooper, none. Julia Cooper, Gladys S. Cooper, none.

4. Parents A. J. Cooper deceased. Gladys M. Cooper, deceased.

5. Grandparents, Clarence Mouton, Agnes Mouton, deceased. Osceola Cooper, Alice Cooper, deceased.

6. Brothers and spouses, A. J. Cooper, Jr. Mario Cooper, none. William M. Cooper, deceased.

7. Sisters and spouses, Peggy Cooper Cafritz, $1,000, 1991. Conrad Cafritz, Sidney Yates. Dominic Cooper, none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PELL. Mr. President, for the Committee on Foreign Relations, I also report favorably a nomination list in the Foreign Service which was printed in full in the CONGRESSIONAL RECORD of September 22, 1994, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of September 22, 1994 at the end of the Senate proceedings.)

By Mr. INOUYE, from the Committee on Indian Affairs:

LaDonna Harris, of New Mexico, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term expiring May 19, 2000.

Barbara Blum, of the District of Columbia, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for the remainder of the term expiring May 19, 1996.

Loren Kieve, of New Mexico, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for the remainder of the term expiring May 19, 1996.

(The above nominations were reported with the recommendation that they be confirmed.)

By Mr. PELL, from the Committee on Foreign Relations:

Treaty Doc. 103-23 Two Treaties With The United Kingdom Establishing Caribbean Maritime Boundaries (Exec. Rept. 103-35).

Treaty Doc. 103-27 Convention on the Conservation and Management of Pollock Resources In the Central Bering Sea (Exec. Rept. 103-36).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATFIELD:

S. 2473. A bill to provide for the reconstitution of outstanding repayment obligations of the Administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System; to the Committee on Energy and Natural Resources.

By Mr. CAMPBELL (for himself, Mr. CRAIG, Mr. KEMPTHORNE, Mr. LEAHY, and Mr. BURNS):

S. 2474. A bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to improve the national recreational trails funding program, and for other purposes; to the Committee on Environment and Public Works..

By Mr. PELL:

S. 2475. An original bill to authorize assistance to promote the peaceful resolution of conflicts in Africa; from the Committee on Foreign Relations; placed on the calendar.

By Mr. CHAFEE:

S. 2476. A bill to amend the Internal Revenue Code of 1986 to encourage individuals to save through individual retirement accounts, and for other purposes; to the Committee on Finance.

By Mr. GREGG:

S. 2477. A bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes; to the Committee on Finance.

By Mr. KERRY (for himself, Mr. BUMPERS, Mr. PRESSLER, Mr. NUNN, Mr. CHAFEE, Mr. INOUYE, Mr. BURNS, Mr. LAUTENBERG, Ms. MOSELEY-BRAUN, Mr. CAMPBELL, Mr. WELLSTONE, Mr. WOFFORD, and Mr. KOHL):

S. 2478. A bill to amend the Small Business Act to enhance the business development opportunities of small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes; to the Committee on Small Business.

By Mrs. MURRAY:

S. 2479. A bill to promote the construction and operation of United States flag cruise vessels in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMPSON:

S. 2480. A bill to amend the Immigration and Nationality Act to add provisions relating to the treatment of criminal aliens under the immigration laws of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. REID (for himself, Mr. BIDEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BRYAN, Mr. D'AMATO, Mr. DORGAN, Mr. GLENN, Mr. HOLLINGS, Mr. LEVIN, Mr. PELL, Mr. RIEGLE, Mr. ROCKEFELLER, and Mr. SASSER):

S.J. Res. 225. A joint resolution to designate February 5, 1995, through February 11, 1995, and February 4, 1996, through February 10, 1996, as "National Burn Awareness Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATFIELD:

S. 2473. A bill to provide for the reconstitution of outstanding repayment obligations of the Administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System; to the Committee on Energy and Natural Resources.

THE BONNEVILLE POWER ADMINSITRATION APPROPRIATIONS REFINANCING ACT

• Mr. HATFIELD. Mr. President, on behalf of the administration, I am introducing legislation entitled the "Bonneville Power Administration Appropriations Refinancing Act." The bill was transmitted officially to the Senate on September 15, 1994, and is similar to S. 2332, legislation that Senator MURRAY and I introduced on July 28,1994.

Although insufficient time remains in this session for the Senate to consider the proposal, I am pleased that the administration has endorsed the refinancing of the BPA's appropriated debt, and believe that this support is crucial for the enactment of a refinancing bill during the next session of Congress. I look forward to working with the administration and my Senate and House colleagues on this important legislation in the 104th Congress.

Mr. President, I ask unanimous consent that the bill, a section-by-section analysis, and the letter of transmittal from the Secretary of Energy to the President of the Senate be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2473

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Bonneville Power Administration Appropriations Refinancing Act."

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) "Administrator" means the Administrator of the Bonneville Power Administration;

(2) "capital investment" means a capitalized cost funded by Federal appropriations that—

(A) is for a project, facility, or separable unit or feature of a project or facility;

(B) is a cost for which the Administrator is required by law to establish rates to repay to the U.S. Treasury through the sale of electric power, transmission, or other services;

(C) excludes a Federal irrigation investment; and

(D) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838(k));

(3) "new capital investment" means a capital investment for a project, facility, or separable unit or feature of a project or facility, placed in service after September 30, 1995.

(4) "old capital investment" means a capital investment whose capitalized cost—

(A) was incurred, but not repaid, before October 1, 1995, and

(B) was for a project, facility, or separable unit or feature of a project or facility, placed in service before October 1, 1995;

(5) "repayment date" means the end of the period within which the Administrator's rates are to assure the repayment of the principal amount of a capital investment; and

(6) "Treasury rate" means:

(A) for an old capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1995, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1995, and the repayment date for the old capital investment; and

(B) for a new capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the new capital investment.

SEC. 3. NEW PRINCIPAL AMOUNTS.

(a) Effective October 1, 1995, an old capital investment has a new principal amount that is the sum of—

(1) the present value of the old payment amounts for the old capital investment, calculated using a discount rate equal to the Treasury rate for the old capital investment; and

(2) an amount equal to $100,000,000 multiplied by a fraction whose numerator is the principal amount of the old payment amounts for the old capital investment and whose denominator is the sum of the principal amounts of the old payment amounts for all old capital investments.

(b) With the approval of the Secretary of the Treasury based solely on consistency with this Act, the Administrator shall determine the new principal amounts under section 3 and the assignment of interest rates to the new principal amounts under section 4.

(c) For the purposes of this section, "old payment amounts" means, for an old capital investment, the annual interest and principal that the Administrator would have paid to the U.S. Treasury from October 1, 1995, if this Act were not enacted, assuming that—

(1) the principal were repaid—

(A) on the repayment date the Administrator assigned before October 1, 1993, to the old capital investment, or

(B) with respect to an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1993, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1993; and

(2) interest were paid—

(A) at the interest rate the Administrator assigned before October 1, 1993, to the old capital investment, or

(B) with respect to an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1993, at a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the old capital investment.

SEC. 4. INTEREST RATE FOR NEW PRINCIPAL AMOUNTS.

As of October 1, 1995, the unpaid balance on the new principal amount established for an old capital investment under section 3 bears interest annually at the Treasury rate for the old capital investment until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

SEC. 5. REPAYMENT DATES.

As of October 1, 1995, the repayment date for the new principal amount established for an old capital investment under section 3 is no earlier than the repayment date for the old capital investment assumed in section 3(c)(1).

SEC. 6. PREPAYMENT LIMITATIONS.

During the period October 1, 1995, through September 30, 2000, the total new principal amounts of old capital investments, as established under section 3, that the Administrator may pay before their respective repayment dates shall not exceed $100,000,000.

SEC. 7. INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION.

(a) The principal amount of a new capital investment includes interest in each fiscal year of construction of the related project, facility, or separable unit or feature at a rate equal to the one-year rate for the fiscal year on the sum of—

(1) construction expenditures that were made from the date construction commenced through the end of the fiscal year, and

(2) accrued interest during construction.

(b) The Administrator is not required to pay, during construction of the project, facility, or separable unit or feature, the interest calculated, accrued, and capitalized under subsection (a).

(c) For the purposes of this section, "one-year rate" for a fiscal year means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year, on outstanding interest-bearing obligations of the United States with periods to maturity of approximately one year.

SEC. 8. INTEREST RATES FOR NEW CAPITAL INVESTMENTS.

The unpaid balance on the principal amount of a new capital investment bears interest at the Treasury rate for the new capital investment from the date the related project, facility, or separable unit or feature is placed in service until the earlier of the date the new capital investment is repaid or the repayment date for the new capital investment.

SEC. 9. APPROPRIATED AMOUNTS.

(a) Notwithstanding any other law and without fiscal year limitation, there are appropriated to the Administrator $15.25 million in fiscal year 1996, $15.86 million in fiscal year 1997, $16.49 million is fiscal year 1998, $17.15 million in fiscal year 1999, $17.84 million in fiscal year 2000, and $4.10 million in each succeeding fiscal year so long as the administrator makes annual payments to the Tribes under the settlement agreement.

(b) For the purposes of this section—

(1) "settlement agreement" means that settlement agreement between the United States of America and the Confederated Tribes of the Colville Reservation signed by the Tribes on April 16, 1994, and by the United States of America on April 21, 1994, which settlement agreement resolves claims of the Tribes in Docket 181–D of the Indian Claims Commission, which docket has been transferred to the United States Court of Federal Claims; and

(2) "Tribes" means the Confederated Tribes of the Colville Reservation, a federally-recognized Indian Tribe.

SEC. 10. CONTRACT PROVISIONS.

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1995, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1995—

(1) the Administrator shall establish rates and charges on the basis that—

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under section 3 of this Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under section 4 of this Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and,

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under section 3 of this Act and to pay the interest on the principal amount under section 4 of this Act, no amount may be charged for return to the U.S. Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31 United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by this Act; and

(4) the contract provisions specified in the Act do not—

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to—

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates.

SEC. 11. SAVINGS PROVISIONS.

(a) This Act does not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the "Administrator's net proceeds," as defined in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k(b)).

(b) Except as provided in section 6 of this Act, this Act does not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.

BONNEVILLE POWER ADMINISTRATION APPROPRIATIONS REFINANCING ACT—SECTION-BY-SECTION ANALYSIS

INTRODUCTION

The Bonneville Power Administration (BPA) markets electric power produced by federal hydroelectric projects in the Pacific Northwest and provides electric power transmission services over certain federally-owned transmission facilities. Among other obligations, BPA establishes rates to repay to the U.S. Treasury the federal taxpayers' investments in these hydroelectric projects and transmission facilities made primarily through annual and no-year appropriations. Since the early 1980's, subsidy criticisms have been directed at the relatively low interest rates applicable to many of these Federal Columbia River Power System (FCRPS) investments. The purpose of this legislation is to resolve permanently the subsidy criticisms in a way that benefits the taxpayer while minimizing the impact on BPA's power and transmission rates.

The legislation accomplishes this purpose by resetting the principal of BPA's outstanding repayment obligations at an amount that is $100 million greater than the present value of the principal and interest BPA would have paid in the absence of this Act on the outstanding appropriated investments in the FCRPS. The interest rates applicable to the reset principal amounts are based on the U.S. Treasury's borrowing costs in effect at the time the principal is reset. The resetting of the repayment obligations is effective October 1, 1995, coincident with the beginning of BPA's next rate period.

While the Act increases BPA's repayment obligations, and consequently will increase the rates BPA charges its ratepayers, it also provides assurance to BPA ratepayers that the Government will not further increase these obligations in the future. By eliminating the exposure to such increases, the legislation substantially improves the ability of BPA to maintain its customer base, and to make future payments to the U.S. Treasury on time and in full. Since the Act will cause both BPA's rates and its cash transfers to the U.S. Treasury to increase, it will aid in reducing the Federal budget deficit by an estimated $45 million over the current budget window.

SECTION 1. SHORT TITLE

This section sets the short title of this Act as the "Bonneville Power Administration Appropriations Refinancing Act."

SECTION 2. DEFINITIONS

This section contains definitions that apply to this Act.

Paragraph (1) is self-explanatory.

Paragraph (2) clarifies the repayment obligations to be affected under this Act by defining "capital investment" to mean a capitalized cost funded by a Federal appropriation for a project, facility, or separable unit or feature of a project or facility, provided that the investment is one for which the Administrator of the Bonneville Power Administration (Administrator or BPA) is required by law to establish rates to repay to the U.S. Treasury. The definition excludes Federal irrigation investments required by law to be repaid by the Administrator through the sale of electric power, transmission or other services, and, investments financed either by BPA current revenues or by bonds issued and sold, or authorized to be issued and sold, under section 13 of the Federal Columbia River Transmission System Act.

Paragraph (3) defines new capital investments as those capital investments that are placed in service after September 30, 1995.

Paragraph (4) defines those capital investments whose principle amounts are reset by this Act. "Old capital investments" are capital investments whose capitalized costs were incurred but not repaid before October 1, 1995, provided that the related project, facility, or separable unit or feature was placed in service before October 1, 1995. Thus, the capital investments whose principal amounts are reset by this Act do not include capital investments placed in service after September 30, 1995. The term "capital investments" is defined in section 2(2).

Paragraph (5) defines "repayment date" as the end of the period that the Administrator is to establish rates to repay the principal amount of a capital investment.

Paragraph (6) defines the term "Treasury rate." The term Treasury rate is used to establish both the discount rates for determining the present value of the old capital investments (section 3(a)) and the interest rates that will apply to the new principal amounts of the old capital investments (section 4). The term Treasury rate is also used under section 8 in determining the interest rates that apply to new capital investments, as the term is defined.

In the case of each old capital investment, Treasury rate means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1995, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1995, and the repayment date for the old capital investment. Thus, the interest rates and discount rates for old capital investments reflect the Treasury yield curve proximate to October 1, 1995. Likewise, in the case of each new capital investment, the Treasury rate means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields during the month preceding the beginning of the fiscal year in which the related facilities are placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year in which the related facilities are placed in service and the repayment date for the new capital investment. Thus, the interest rates for new capital investments reflect the Treasury yield curve proximate to beginning of the fiscal year in which the facilities the new capital investment concerns are placed in service.

The term Treasury rate is not to be confused with other interest rates that this Act directs the Secretary of the Treasury to determine, specifically, the short-term (one-year) interest rates to be used in calculating

interest during construction of new capital investments (section 7) and the interest rates for determining the interest that would have been paid in the absence of this Act on old capital investments that are placed in service after the date of this Act but prior to October 1, 1995 (section 3(b)(2)). These latter interest rates reflect rate methodologies very similar to those specified by the term Treasury rate, but apply to different features of this Act.

It is expected that the Secretary of the Treasury will use an interest rate formulation that the Secretary uses to determine rates for federal lending and borrowing programs generally.

SECTION 3. NEW PRINCIPAL AMOUNTS

Section 3 establishes new principal amounts of the old capital investments, which the Administrator is obligated by law to establish rates to repay. These investments were made by Federal taxpayers primarily through annual appropriations and include investments financed by appropriations to the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and to BPA prior to implementation of the Federal Columbia River Transmission System Act. In general, the new principal amount associated with each such investment is determined (regardless of whether the obligation is for the transmission or generation function of the FCRPS) by (a) calculating the present value of the stream of principal and interest payments on the investment that the Administrator would have paid to the U.S. Treasury absent this Act and (b) adding to the principal of each investment a *pro rata* portion of $100 million. The new principal amount is established on a one-time-only basis. Although the new principal amounts become effective on October 1, 1995, the actual calculation of the reset principal will not occur until after October 1, 1995, because the discount rate will not be determined, and BPA'S final audited financial statements will not become available, until later in that fiscal year.

As prescribed by the term "old capital investments," the new principal amount is not set for appropriations-financed FCRPS investments the related facilities of which are placed in service in or after fiscal year 1996, for Federal irrigation investments required by law to be recovered by the Administrator from the sale of electric power, transmission or other services, or for investments financed by BPA current revenues or by bonds issued or sold, or authorized to be issued and sold, under section 13 of the Federal Columbia River Transmission System Act.

The discount rate used to determine the present value is the Treasury rate for the old capital investment and is identical to the interest rate that applies to the new principal amounts of the old capital investments. Thus, the Secretary of the Treasury is responsible for determining the interest rate and the discount rate assigned to each old capital investment.

The discount period for a principal amount begins on the date that the principal amount associated with an old capital investment is reset (October 1, 1995) and ends, for purposes of making the present value calculation, on the repayment dates provided in this section. The repayment dates for purposes of making the present value calculation are already assigned to almost all of the old capital investments. For old capital investments that will be placed in service after October 1, 1993, but before October 1, 1995, no such dates have been assigned. The Administrator will establish the dates for these latter investments in accordance with U.S. Department of Energy Order RA 6120.2—"Power Marketing Administration Financial Reporting," as in effect at the beginning of fiscal year 1994. These ideas are captured in the definition of the term "old payment amounts."

The interest portion of the old payment amounts is determined on the basis that the principal amount would bear interest annually until repaid at interest rates assigned by the Administrator. For almost all old capital investments, these interest rates were assigned to the capital investments prior to the effective date of this Act. (For old capital investments that are placed in service after September 30, 1993, the interest rates to be used in determining the old payment amounts will be a rate determined by the Secretary of the Treasury proximate to the beginning of the fiscal year in which the related project or facility, or the separable unit or feature of a project or facility, was placed in service. Section 3(c)(2)(B) provides the manner in which these interest rates are established.) Thus, for purposes of determining the present value of a given interest payment on a capital investment, the discount period for the payment is between October 1, 1995, and the date the interest payment would have been made.

The *pro rata* allocation of $100,000,000 is based on the ratio that the nominal principal amount of the old capital investment bears to the sum of the nominal principal amounts of all old capital investments. This added amount fulfills a key financial objective of the Act to provide the U.S. Treasury and Federal taxpayers with a $100,000,000 increase in the present value of BPA's principal and interest payments with respect to the old capital investments. Since the $100,000,000 is a nominal amount that bears interest at a rate equal to the discount rate, the present value of the stream of payments is necessarily increased by $100,000,000.

Paragraph (b) of section 3 provides that with the approval of the Secretary of the Treasury based solely on consistency with this Act, the Administrator shall determine the new principal amounts under section 3 and the assignment of interest rates to the new principal amounts under section 4. The Administrator will calculate the new principal amount of each old capital investment in accord with section 3 on the basis of (i) the outstanding principal amount, the interest rate and the repayment date of the related old capital investment, (ii) the discount rate provided by the Secretary of the Treasury, and (iii) for purposes of calculating the pro rata share of $100 million in each new principal amount under section 3(a)(2), the total principal amount of all old capital investments. The Administrator will provide this data to the Secretary of the Treasury so that the Secretary can approve that the calculation of each new principal amount is consistent with this section and that the assignment of the interest rate to each new principal amount is consistent with section 4.

The approval by the Secretary of the Treasury will be completed as soon as practicable after the data on the new principal amounts and the interest rates are provided by the Administrator. It is expected that the approval by the Secretary will not require substantial time.

SECTION 4. INTEREST RATES FOR NEW PRINCIPAL AMOUNTS

Section 4 provides that the unpaid balance of the new principal amount of each old capital investment shall bear interest at the Treasury rate for the old capital investment, as determined by the Secretary of the Treasury under section 2(6)(A). The unpaid balance of each new principal amount shall bear interest at that rate until the earlier of the date the principal is repaid or the repayment date for the investment.

SECTION 5. REPAYMENT DATES

Section 5, in conjunction with the term "repayment date" as that term is defined in section 2(5), provides that the end of the repayment period for each new principal amount for an old capital investment shall be no earlier than the repayment date used in making the present value calculations in section 3. Under existing law, the Administrator is obligated to establish rates to repay capital investments within a reasonable number of years. Section 5 confirms that the Administrator retains this obligation notwithstanding the enactment of this Act.

SECTION 6. PREPAYMENT LIMITATIONS

Section 6 places a cap on the Administrator's authority to prepay the new principal amounts of old capital investments. During the period October 1, 1995 through September 30, 2000, the Administrator may pay the new principal amounts of old capital investments before their respective repayment dates provided that the total of the prepayments during the period does not exceed $100,000,000.

SECTION 7. INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION

Section 7 establishes in statute a key element of the repayment practices relating to new capital investments. Section 7 provides the interest rates for determining the interest during construction of these facilities. For each fiscal year of construction, the Secretary of the Treasury determines a short-term interest rate upon which that fiscal year's interest during construction is based. The short-term interest rate for a given fiscal year applies to the sum of (a) the cumulative construction expenditures made from the start of construction through the end of the subject fiscal year, and (b) interest during construction that has accrued prior to the end of the subject fiscal year. The short-term rate for the subject fiscal year is set by the Secretary of the Treasury taking into consideration the prevailing market yields on outstanding obligations of the United States with periods to maturity of approximately one year. These ideas are included in the definition of the term "one-year rate."

This method of calculating interest during construction equates to common construction financing practice. In this practice, construction is funded by rolling, short-term debt which, upon completion of construction, is finally rolled over into long-term debt that spans the expected useful life of the facility constructed. Accordingly, section 7 provides that amounts for interest during construction shall be included in the principal amount of a new capital investment. Thus, the Administrator's obligation with respect to the payment of this interest arises when construction is complete, at which point the interest during construction is included in the principal amount of the capital investment.

SECTION 8. INTEREST RATES FOR NEW CAPITAL INVESTMENTS

Section 8 establishes in statute an important component of BPA's repayment practice, that is, the methodology for determining the interest rates for new capital investments. Heretofore, administrative policies and practice established the interest rates applicable to capital investments as a long-term Treasury interest rate in effect at the time construction commenced on the related

facilities. By contrast, section 8 provides that the interest rate assigned to capital investments made in a project, facility, or separable unit or feature of a project or facility, provided it is placed in service after September 30, 1995, is a rate that more accurately reflects the repayment period for the capital investment and interest rates at the time the related facility is placed in service. The interest rate applicable to these capital investments is the Treasury rate, as defined in section 2(6)(B). Each of these investments would bear interest at the rate so assigned until the earlier of the date it is repaid or the end of its repayment period.

SECTION 9. APPROPRIATED AMOUNTS

Pursuant to the settlement agreement with the Tribes, the Administrator will become obligated to pay amounts to the Tribes so long as Grand Coulee Dam produces electric power. Section 9 appropriates certain amounts to the Administrator. (The definitions of Tribes and Settlement Agreements are found in paragraph (b) of section 9). In effect, the appropriations partially offset the Bonneville rate impacts of the annual payments by the Administrator to the Tribes under the settlement agreement. Thus, the taxpayers, through the appropriated amounts under section 9 and amounts that are to be paid from the judgment fund to the Tribes under the settlement agreement, and Bonneville's ratepayers, through the Administrator's obligation to pay annual amounts under the settlement agreement, each bear an equitable share of the costs of the settlement.

Although the amounts appropriated to the Administrator in section 9 are made in connection with the settlement agreement, the Administrator may obligate against these amounts for any authorized purpose of the Administrator. In addition, these amounts are made available without fiscal year limitation, meaning that the amounts remain available to the Administrator until expended. In this manner the amounts appropriated under section 9 are the equivalent of other amounts available in the Bonneville fund and constitute an "appropriation by Congress for the fund" within the meaning of section 11(a)(3) of the Federal Columbia River Transmission System Act (16 U.S.C.S. 838i(a)(3).

SECTION 10. CONTRACT PROVISIONS

Section 10 is intended to capture in contract the purpose of this legislation to permanently resolve issues relating to the repayment obligations of BPA's customers associated with an old capital investment. With regard to such investments, paragraph (1) of section 10 requires that the Administrator offer to include in power and transmission contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any return of the capital investments other that the interest payments or principal repayments authorized by this Act. Paragraph (1) of section 10 also provides assurance to ratepayers that outstanding principal and interest associated with each old capital investment, the principal of which is reset in this legislation, shall be credited in the amount of any payment in satisfaction thereof at the time the payment is tendered. This provision assures that payments of principal and interest will in fact satisfy principal and interest payable on these capital investments.

Whereas paragraph (1) of section 10 limits the return to the U.S. Treasury of the Federal investments in the designated projects and facilities, together with interest thereon, paragraph (2) of section 10 requires the Administrator to offer to include in contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any additional return on those old capital investments. Thus, the Administrator may not impose a charge, rent or other fee for such investments, either while they are being repaid or after they have been repaid. Paragraph (2) of section 10 also contractually fixes the interest obligation on the new principal obligation at the amount determined pursuant to section 4 of this Act.

Paragraph (3) of section 10 is intended to assure BPA ratepayers that the contract provisions described in paragraphs (1) and (2) of section 10 are not indirectly circumvented by requiring BPA ratepayers to bear through BPA rates the cost of a judgment or settlement for breach of the contract provisions. The subsection also confirms that the judgment fund shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a violation of the contract provisions required by section 10. Section 1304 of title 31, United States Code, is a continuing, indefinite appropriation to pay judgments rendered against the United States, provided that payment of the judgment is "not otherwise provided for." Paragraph 3 of section 10 of this Act assures both that the Bonneville fund, described in section 838 of title 16, United States Code, shall not be available to pay a judgment or settlement for breach by the United States of the contract provisions required by section 10 of this Act, and that no appropriation, other than the judgment fund, is available to pay such a judgment.

Paragraph (4)(A) of section 10 establishes that the contract protections required by section 10 of this Act do not extend to Bonneville's recovering a tax that is generally applicable to electric utilities, whether the recovery by Bonneville is made through its rates or by other means.

Paragraph (4)(B) of section 10 makes clear that the contract terms described above are in no way intended to alter the Administrator's current rate design discretion or ratemaking authority to recover other costs or allocate costs and benefits. This Act, including the contract provisions under section 10, does not preclude the Administrator from recovering any other costs such as general overhead, operations and maintenance, fish and wildlife, conservation, risk mitigation, modifications, additions, improvements, and replacements to facilities, and other costs properly allocable to a rate or resource.

SECTION 11. SAVINGS PROVISIONS

Subsection (a) of this section assures that the principal and interest payments by the Administrator as established in this Act shall be paid only from the Administrator's net proceeds.

Subsection (b) confirms that the Administrator may repay all or a portion of the principal associated with a capital investment before the end of its repayment period, except as limited by section 6 of this Act.

THE SECRETARY OF ENERGY,
Washington, DC, September 15, 1994.

Hon. AL GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation entitled the "Bonneville Power Administration Appropriations Refinancing Act."

Since the early 1980's, criticism has been directed at the relatively low interest rates outstanding on many of the Federal Columbia River Power System investments funded by Federal appropriations and the flexible method used by the Bonneville Power Administration to schedule principal payments on its Federal obligations. This legislation addresses long-standing subsidy criticisms in a way that benefits the taxpayer while minimizing the impact on Bonneville's power and transmission rates.

Last fall, as part of the President's National Performance Review initiative, the Administration proposed legislation that called for Bonneville to buy out its outstanding, low interest repayment obligations on appropriations with debt that Bonneville would issue in the open market. Although the proposed legislation would have increased the present value of Bonneville's debt service payments to the U.S. Treasury, it was scored as adding to the Federal deficit because Bonneville would have incurred issuance costs and a higher rate of interest than if the buy-out were financed through the U.S. Treasury. That legislation also raised concerns that Bonneville open-market access could conflict with the Treasury's overall debt management plans.

Since last fall, Bonneville has collaborated with its customers and with other agencies in the Executive Branch to develop revised legislation that avoids the issues raised by Bonneville open-market access. The enclosed legislation calls for Bonneville's outstanding repayment obligations on appropriations to be reconstituted by re-setting outstanding principal at the present value of the principal and annual interest that Bonneville would pay to the U.S. Treasury, plus $100 million. Interest rates on the new principal would be reassigned at current Treasury interest rates. The bill also restricts prepayments of reconstituted obligations to $100 million in the period from October 1, 1995 through September 30, 2000. Other repayment terms and conditions would remain unaffected.

Benefits to the Government of this legislation are that it provides a minimum $100 million increase in the present value of Bonneville's debt service payments to the U.S. Treasury. This increase represents agreement between ratepayers and the Government to resolve the subsidy criticisms for outstanding appropriation repayment obligations. It would reduce the Federal deficit by an estimated $45 million because Bonneville cash transfers to Treasury and rates will increase. Bonneville's customers recognize that recurring subsidy criticisms must be addressed once and for all because of the risk they pose to Bonneville's financial stability and rate competitiveness. The legislation includes assurances to ratepayers that the Government will not maintain its customer base, improve its competitive position, and strengthen its ability to meet future payments to the U.S. Treasury on time and in full.

The legislation also proposes that certain appropriations be provided to Bonneville in connection with payments Bonneville would make under a proposed litigation settlement. The United States and the Confederated Tribes of the Colville Reservation propose to settle the Tribes' claims that they are entitled to a share of the power production revenues of Grand Coulee Dam. The settlement would have the Tribes dismiss the claims in return for a one-time cash payment of $53 million payable from the Judgment Fund (authorized in section 1304 of title 31, United States Code), and annual payments from Bonneville through the revenue-generating life of Grand Coulee Dam.

The annual payments from Bonneville would begin at approximately $15 million in FY 1996, and escalate under provisions in the settlement. Bonneville would receive appropriations equal to 100 percent of the annual payments in each of fiscal years 1996 through 2000. In fiscal years thereafter, Bonneville would receive an appropriation equal to approximately $4 million per year. These appropriations, together with the one-time Judgment Fund payment, represent an equitable allocation of the cost of the settlement between Bonneville ratepayers and Federal taxpayers.

The Administration recently submitted Colville Settlement legislation that contains repayment credit provisions rather than the appropriation that is in the legislation being forwarded here. The appropriations in section 9 of the enclosed Bonneville Power Administration Appropriations Refinancing legislation supersede those in the administration's Colville Settlement legislative proposal. The Administration is open to the concept of merging these two proposals in the legislative process. By the same token, because the same results associated with implementing the settlement agreement are achieved with respect to the Tribes, the Treasury, and the rate payers, we are comfortable with proceeding with the Colville debt repayment concept at this time and then enacting the Bonneville Power Administration Appropriations Refinancing Act subsequently.

The Omnibus Budget Reconciliation Act of 1990 requires that all revenue and direct spending legislation meet a pay-as-you-go requirement through fiscal year 1998. That is, no revenue and direct spending bill should result in an increase in the deficit, and if it does, it will trigger a sequester if it is not fully offset. The provisions of this legislation taken together would decrease net Federal outlays by approximately $45 million over fiscal year 1996 through fiscal year 1998.

The Office of Management and Budget advises that the enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

HAZEL R. O'LEARY.●

By Mr. CAMPBELL (for himself, Mr. CRAIG, Mr. KEMPTHORNE, Mr. LEAHY, and Mr. BURNS):

S. 2474. A bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to improve the national recreational trails funding program, and for other purposes; to the Committee on Environment and Public Works.

THE NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM AMENDMENT ACT OF 1994

Mr. CAMPBELL. Madam President, I rise today to introduce a bill that will correct a problem in getting funding to maintain and expand our Nation's Trail System.

Trails are the historic backbone of our transportation system in this country. Trails guided settlers to the West. Trails helped bring commerce and supplies to those settlers. Today, trails still provide transportation, but also provide exercise and relaxation. Our trail system is suffering due to a lack of money. In 1991, Congress promised millions of dollars to the States for trails. Unfortunately, the States have not seen this funding due to a technical glitch.

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act. Included in ISTEA was the National Recreational Trails Trust Fund Act, which returns to each State a portion of the sales tax on gasoline purchased by all motorized trail users. The moneys were to be used to construct and maintain a State's motorized and nonmotorized trails.

Trails funding seems to be on a downward spiral. Although $30 million was authorized for trails under ISTEA, only $7.3 million was appropriated in fiscal year 1993. In fiscal year 1994, the matter became more technical. While ISTEA established a Trails Trust Fund, no administrative mechanism was established to distribute the funds; therefore, no budget States of my colleagues. I have a letter from the Governor of Colorado that was sent to Secretary Peña explaining his concern about the lack of trails funding that I ask unanimous consent to be included in the RECORD.

As mentioned, funding for the National Recreational Trails Trust Fund is generated by the Federal motor fuels tax. A recent report released by the U.S. Treasury Department showed that $63 million in Federal gas taxes were collected in fiscal year 1992 from motorcyclists. Collections in fiscal year 1993 totaled $64 million.

The philosophy of user pay/user benefit has been a tenet of tax policy. Under the act, these funds should be returned to State trails programs. However, of the $127 million collected in those 2 years, the National Recreational Trust Fund has received only $7.5 million. This $119.5 million shortfall is unjust.

The $7.5 million allocated in fiscal year 1993 was used for badly needed trail maintenance and repair. A national advisory board has been working with State advisory boards to improve trail conditions for both motorized and nonmotorized trail users. But this program has been cut short by the unexpected stoppage of Federal appropriations.

Madam President, our trails need every cent of available Highway Trust Fund money intended for this purpose. My bill would provide $6 million for the National Recreational Trails Trust Fund. This money comes from projects in the National Highway System bill that are no longer needed, or projects that will not use all of their allocation has been made for the appropriation of funds. This apparently caused the authorizing and appropriating committees to argue whether funding could be provided for this program—leading to a deletion of trails funding in fiscal year 1994. To make matters worse, trails funding was not included in the President's fiscal year 1995 budget request.

My State of Colorado received a grant for $122,022 in 1993. Motorized and nonmotorized projects each received 30 percent of the money, and 40 percent went to combined or multiple-use trail projects.

Communities have used these grants as seed money to encourage the building of trails. Municipalities, businesses, volunteers, and civic groups have donated time and money to build these trails. This is truly an endeavor in which the government and the public can work together to achieve positive results.

While many use and appreciate trails, many may not realize how they came about and realize their need for financing. According to a student research project conducted at the University of Northern Colorado, every dollar spent on a multiuse trail—hike, bike, equestrian, et cetera—returns $28 to the community. The results included such indirect returns as environmental benefits and better community health.

It is unfortunate that such a worthy program, which is authorized under ISTEA, has had so many complications in receiving its deserved funding. This has caused a severe lack of money for important trail projects in my State, and in the appropriated funds.

I hope that my colleagues will talk to trail users in their States and join me in cosponsoring this necessary legislation.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF COLORADO,
November 9, 1993.

FEDERICO PEÑA,
Secretary of Transportation,
Washington, DC.

DEAR FEDERICO: I am writing to express my disappointment that the National Recreational Trails Fund, administered by your department, will likely have its funding cut for fiscal year 1994. The start-up funding available during fiscal year 1993 provided Colorado with $122,000, nearly doubling the resources we had available for important new trail projects across the state. I am writing to urge your immediate help in continuing this small but productive flow of funds.

In recent years, the state has consistently received requests for more than $2 million from local governments for trail construction and maintenance. As a state, we have made a bold, long-term commitment through Great Outdoors Colorado. In addition, we applaud the commitment of the Clinton Administration in proposing funding for the trails program, using a federal gas tax paid on off-highway recreational activities.

The National Recreation Trails Fund is a program with a real Colorado connection, and one which has been championed in Congress by Colorado Senator Ben Nighthorse Campbell. It is my understanding that the decision to delete funding was made at the staff level during the recent transportation appropriation bill conference, based on a technical question raised by the House, and without consideration of the strong support for the substance of the program.

The trails program has been a positive catalyst for progress on trails in Colorado in

just one year. I would appreciate your consideration of this effective program.

Sincerely,

ROY ROMER,
Governor.

By Mr. CHAFEE:

S. 2476. A bill to amend the Internal Revenue Code of 1986 to encourage individuals to save through individual retirement accounts, and for other purposes; to the Committee on Finance.

THE IRA EQUITY AND ENHANCEMENT ACT OF 1994

Mr. CHAFEE. Mr. President, I am pleased to come to the floor this afternoon to introduce legislation to give much-needed help to working families. My bill will expand individual retirement accounts, and give them added flexibility to help alleviate some of the financial worries facing families today.

My legislation has two components to it. First, it eliminates an inequity in current law that works to the disadvantage of single-earner families. Under current law, families where both spouses work can contribute up to $4,000 to an IRA. However, families with only one working spouse is limited to $2,250—$2,000 for the wage earner and a mere $250 for the nonworking spouse. This stricter limit makes it very difficult for these families to accumulate adequate funds for their retirement. This situation is made all the more worse because the non working spouse has no other access to a retirement plan and is not earning Social Security credits. This problem was highlighted earlier this year by Senators HUTCHISON and MIKULSKI when they introduced legislation correcting this problem. Like their bill, my proposal eliminates this inequity and allows all eligible families to contribute the maximum $4,000 to an IRA.

My legislation also makes individual retirement accounts more attractive by increasing their flexibility. This bill eliminates the 10-percent penalty for early withdrawals from an IRA if the money is used to purchase a first home, to meet tuition needs, to pay medical or long-term care expenses, or to carry a family through periods of prolonged unemployment.

Today, families are reluctant to take advantage of IRA's because they fear that some unforeseen expense will arise that will require them to dip into their savings. Under current law, if a family member is faced with a medical or long term care expense, or is without a job for a substantial period of time, the Federal Government exacts a 10-percent penalty for using funds in an IRA to meet this need. This penalty is imposed above and beyond the normal income tax that is due. My bill eliminates that penalty in these situations.

In addition to meeting emergency medical needs, the bill allows IRA's to be used—without penalty—for the purchase of a first home or to further the education of a member of the family. Owning a home and educating their children are two of the most important goals of Rhode Island families. They also represent the two greatest financial challenges facing families today. By making IRA's accessible for these purposes, we can make it a little easier for families to meet these goals.

In summary, the legislation makes IRA's fairer by eliminating the bias against nonworking spouses. It also makes IRA's a more attractive savings vehicle by allowing access to these funds to meet pressing financial needs that may arise before retirement.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS AND ANSWERS ON SENATOR CHAFEE'S IRA EQUITY AND ENHANCEMENT ACT

1. Won't this bill encourage families to use their retirement savings for purposes other than retirement?

The bill allows IRA funds to be used to buy a first home, to meet tuition expenses, to pay medical or long-term care expenses, or to make ends meet during a period of prolonged unemployment. Each of these situations represents a genuine financial concern facing families today. The federal government should do what it can to assist families in meeting these challenges rather than create obstacles.

2. Why increase the maximum contribution for non-working spouses?

This provision is designed to level the playing field for all families. Families that decide to have one spouse stay at home to raise their children should not be penalized by making it harder for them to save for retirement.

3. Who qualifies as a "first-time homebuyer?"

A first-time homebuyer is anyone who has not had an ownership interest in a principal residence for three years prior to acquiring the home.

4. Can a person take advantage of the penalty-free distribution to purchase a home for someone other than him or herself?

Yes. Penalty-free distributions can be made for the individual's spouse, children or grandchildren, so long as the person who will reside in the home qualifies as a first-time homebuyer.

5. What institutions qualify for the component of the bill relating to higher education expenses?

Most public and nonprofit universities and colleges and certain vocational schools will qualify.

6. What education expenses can penalty-free distributions be made for?

Distributions can be made for tuition, fees, books, supplies and equipment required as part of the enrollment or attendance at these schools.

7. Are the qualified education expenses limited to the owner of the IRA?

No. Distributions used to pay the education expenses of the IRA owner and his or her spouse, child, or grandchild are eligible for the favorable tax treatment.

8. What expenses qualify as long-term care?

These expenses include necessary diagnostic, preventive, therapeutic, rehabilitative, and maintenance services required by an individual to perform normal living activities such as eating, dressing, and bathing.

9. Who qualifies as needing long-term care under this proposal?

Someone who is certified by a licensed health care practitioner as being unable to perform at least three normal activities of daily living (eating, transferring, toileting, dressing, and bathing).

10. How long does one need to be unemployed before being able to use their IRA funds without penalty?

Anyone who has received unemployment compensation for twelve consecutive weeks under any Federal or State unemployment compensation law can get penalty-free access to their IRA money.

By Mr. GREGG:

S. 2477. A bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes; to the Committee on Finance.

FAMILY FOREST AND PRESERVATION ACT

• Mr. GREGG. Mr. President, I introduce the Family Forestland Preservation Act of 1994. This bill amends several key tax provisions in order to help landowners keep their lands in long-term private forest ownership and management. Without these changes, many landowners will continue to be forced to sell or change the use of their land.

This bill derives from 4 years of work by the Northern Forest Lands Council [NFLC]. The NFLC was created in 1990, to seek ways for Maine, New Hampshire, Vermont, and New York to maintain the "traditional patterns of land ownership and use" in the forest that covers this Nation's northeast. The northern forest is a 26 million acre stretch of land, home to 1 million residents, and within a 2-hour drive of 70 million people. Nearly 85 percent of the forest is privately owned. However, times have changed and social and economic forces have begun to affect the traditional patterns of land use with more and more land being marketed for development.

This bill will help maintain traditional patterns, and thus preserve the forest, by adjusting several estate tax provisions. This bill would allow heirs to make postmortem donations of conservation easements on undeveloped estate land and allow the valuation of undeveloped land at current use value for estate tax purposes if the owner or heir agrees to maintain the land in its current use for a period of 25 years. This bill would also establish a partial inflation adjustment for timber sales by allowing a tax credit not to exceed 50 percent.

This will encourage landowners to maintain their timberland for long-term stewardship that is both economically and environmentally desirable. Also, the bill would eliminate the requirement that landowners generally must work 100 hours per year in forest management on their forest properties

to be allowed to deduct normal management expenses from timber activities against nonpassive income. Currently landowners are required to capitalize these losses until timber is harvested. This legislation, though prompted by the NFLC's work, will not benefit only the four States that make up the northern forest. It will benefit all States with forest land and all who enjoy the multiple uses of forest land. I urge my colleagues to support this bill, that will not only protect the historic current use patterns, but allow the rustic beauty of our forests to be enjoyed by all.●

By Mr. KERRY (for himself, Mr. BUMPERS, Mr. PRESSLER, Mr. NUNN, Mr. CHAFEE, Mr. INOUYE, Mr. BURNS, Mr. LAUTENBERG, Ms. MOSELEY-BRAUN, Mr. CAMPBELL, Mr. WELLSTONE, Mr. WOFFORD, and Mr. KOHL):

S. 2478. A bill to amend the Small Business Act to enhance the business development opportunities of small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes; to the Committee on Small Business.

THE BUSINESS DEVELOPMENT OPPORTUNITY ACT OF 1994

● Mr. KERRY. Mr. President, today, I am joined by Senators PRESSLER, BUMPERS, NUNN, and others in introducing the Business Development Opportunity Act of 1994. This bill will reform the Small Business Administration's [SBA] Minority Small Business and Capital Ownership Development Program commonly referred to as the 8(a) program. It will transform what is now an overly bureaucratic set-aside program into a true business development program. The reformed program provides program participants improved and intensified managerial training, access to equity, reduction of bureaucratic redtape, and opportunities for program graduates. Further, it will increase safeguards against abuse.

SBA Administrator Erskine Bowles has made a strong start in addressing the persistent problems of the program through the Minority Enterprise Development program [MED]. I believe this bill we are introducing today can be an important part of the development of the MED program. I hope that together our efforts will help develop a strong and vibrant minority small business community in every part of the Nation. I look forward to working with the SBA on these matters.

Minority business development should not be viewed as only part of our social agenda but also as an essential national economic imperative. A growing minority enterprise community is needed for the well-being of our Nation. America must be able to field its complete team if we are to succeed in the fierce global competition of the 21st century.

Small business is an important vehicle for historically disadvantaged minority groups to foster economic development for themselves and their communities. However, these groups have not had the access to equity necessary to develop a strong small business foundation. They have not had the access to information on how to develop small businesses. Furthermore, minority-owned small businesses have historically been underrepresented as contractors in the Federal procurement process.

I seek to fashion a more effective minority enterprise development program. One that will contribute to the long-term viability of participating firms after graduation and one that provides a full array of business development assistance.

The new program must be capable of helping more firms at different states of development, including start-up firms. As reflected in repeated General Accounting Office [GAO] reviews since 1980, the current program has provided too little assistance for the vast majority of the firms participating. We tried to address those problems in the 1988 legislation through requirements for transition management planning and business mix targets that gradually diminished the firm's dependence on 8(a) contracts, but they have not yet been fully implemented.

Our bill addresses this issue by improving and focusing SBA's Management Assistance program. This will add core business development skills, such as marketing and proposal development to 8(a) certified businesses only.

It will improve access to capital for program graduates by allowing them to sell a noncontrolling equity share of their business without losing the right to continue performance of contracts won while affiliated with the program. The bill will implement the Surety Bond Waiver Test program, which has granted waivers of surety bond requirements to qualified companies for some Government contracts. Also, it authorizes a test program to permit 8(a) program graduates to recompete for one Government contract that it had won while in the program as long as 25 percent of the contract is subcontracted to a current 8(a) participant.

There have been charges by the SBA inspector general office that some of the 8(a) certified small businesses are actually "fronts" for nonminority businesses which would otherwise not qualify for these programs.

Our bill will deter "front" companies from the various small disadvantaged business programs by improving SBA's administration of a Governmentwide protest system in which other participants can challenge a firm's eligibility. It gives the SBA access to more information on potential program abusers. It also encourages the use of available administrative as well as criminal remedies for those individuals or firms found to be engaged in misrepresentation.

The program has developed a maze of regulations and paperwork that keep many from even applying for certification. Applications are reviewed not only at the regional SBA offices but at the central SBA offices. By not allowing businesses to deal directly with agencies but only through the SBA the program adds a needless extra level of bureaucracy. Once a contract is signed, too many cumbersome reports are needed, draining valuable time and resources away from where they are needed the most.

This legislation will streamline and simplify the 8(a) programs certification and contracting process. It develops a onestop application process to expedite the application process. It accelerates the contract award process by allowing Federal agencies to award contracts directly to 8(a) certified businesses. It will streamline and simplify the process by which a company and the SBA determine whether companies fit into the appropriate size classifications for specific contracts.

Not enough has been done to allow agencies to reach the minority set-aside goals.

Our bill will expand the tools available for agencies to meet set-aside goals in addition to the 8(a) program. It extends the Department of Defense section 1207 program which provides tools for agencies to help them meet their goals for contracting with small disadvantaged businesses to all agencies can use a more streamlined and more competitive program.

I believe that the Business Development Opportunity Act of 1994 will help minority owned small businesses grow and prosper through training, assistance, financing, a reduction in paperwork, and safeguard against fraud. I hope my colleagues will support this important legislation.

I ask unanimous consent that the text of the bill and a summary of its provisions appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2478

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Business Development Opportunity Act of 1994".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—AMENDMENTS TO THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

PART A—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

SEC. 101. MINORITY ENTERPRISE DEVELOPMENT PROGRAM.

(a) PROGRAM ESTABLISHED.—Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended—

(1) by striking the subsection designation and the first 2 sentences and inserting the following:

"(10) MINORITY ENTERPRISE DEVELOPMENT PROGRAM.—

"(A) ESTABLISHMENT.—There is established within the Administration a Minority Enterprise Development Program (hereafter in this paragraph referred to as the 'Program'), which shall be administered by an Associate Administrator in accordance with this paragraph and section 8(a).";

(2) by striking subparagraph (B);

(3) by striking "(A) The Program shall—" and inserting the following:

"(B) PROGRAM GOALS.—The Program shall—"; and

(4) in subparagraph (C)(i), by striking "participating in any program or activity conducted under the authority of this paragraph or".

(b) PROGRAM PHASES.—Section 7(j)(12) of the Small Business Act (15 U.S.C. 636(j)(12)) is amended to read as follows:

"(12) SEGMENTING OF MINORITY ENTERPRISE DEVELOPMENT PROGRAM.—

"(A) IN GENERAL.—In addition to such other segments as the Administrator deems appropriate, the Minority Enterprise Development Program established in paragraph (10) shall consist of the following 3 phases:

"(i) The Business Creation Phase.

"(ii) The Business Development Phase.

"(iii) The Business Development (Preferential Contracting) Phase.

"(B) ELIGIBILITY FOR PREFERENTIAL CONTRACTING.—Only a firm participating in the Business Development (Preferential Contracting) Phase shall be eligible for award of Federal contracts pursuant to section 8(a) (and shall be referred to as a 'Program Participant' for the purposes of this section and section 8(a)).

"(C) PARTICIPATION BY FIRMS.—Except as provided in section 10(c), a firm may participate in the Business Development (Preferential Contracting) Phase described in subparagraph (A)(iii) for a total period of not more than 9 years, which period shall be divided into the following 2 stages:

"(i) A developmental stage (of not more than the first 5 years).

"(ii) A transitional stage.".

(c) CONFORMING AMENDMENTS.—The Small Business Act (15 U.S.C. 601 et seq.) is amended—

(1) by striking "Minority Small Business and Capital Ownership Development" each place it appears and inserting "Minority Enterprise Development";

(2) by striking "Capital Ownership Development" each place it appears and inserting "Minority Enterprise Development";

(3) by striking "capital ownership development" each place it appears and inserting "minority enterprise development";

(4) by striking "Business Opportunity Specialist" each place it appears and inserting "Business Development Specialist"; and

(5) by striking section 7(j)(15) and inserting the following:

"(15) [Reserved].".

SEC. 102. CONSOLIDATION OF ELIGIBILITY REVIEW FUNCTION.

Section 7(j)(11)(E) of the Small Business Act (15 U.S.C. 636(j)(11)(E)) is amended by striking the third sentence.

SEC. 103. CLARIFICATION OF VARIOUS ELIGIBILITY CRITERIA.

(a) TRIBALLY OWNED CORPORATIONS.—Sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) are each amended by striking "an economically disadvantaged Indian tribe" each place it appears and inserting "an Indian tribe".

(b) NATIVE HAWAIIAN ORGANIZATIONS.—Section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) is amended by striking "an economically disadvantaged Native Hawaiian organization" each place it appears and inserting "a Native Hawaiian organization".

(c) PRESUMPTION OF ECONOMIC DISADVANTAGE.—Section 8(a)(6)(A) of the Small Business Act (15 U.S.C. 637(a)(6)(A)) is amended by striking the last sentence.

SEC. 104. CLARIFICATION OF CERTAIN ADDITIONAL ELIGIBILITY CRITERIA IMPOSED BY REGULATION.

Section 7(j)(11)(G) of the Small Business Act (15 U.S.C. 636(j)(11)(G)) is amended to read as follows:

"(G) An applicant shall not be denied admission into the Minority Enterprise Development Program established in paragraph (10) based solely on a determination by the Division that—

"(i) specific contract opportunities are unavailable to assist in the development of such concern, unless—

"(I) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; and

"(II) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services;

"(ii) the prospective Program Participant firm has not been in operation for a period of time specified by the Administration prior to making application to the Program, if the prospective Program Participant firm can demonstrate that—

"(I) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

"(II) the prospective Program Participant has demonstrated technical expertise necessary to carry out its business plan with a substantial likelihood of success;

"(III) the prospective Program Participant has, or can demonstrate its ability to timely obtain, adequate capital to carry out its business plan;

"(IV) the prospective Program Participant can demonstrate the competitive award and performance (either ongoing or completed) of contracts from governmental or nongovernmental sources in the primary industry category reflected in its business plan; and

"(V) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts of the type likely to be awarded to the firm pursuant to section 8(a);

"(iii) the individual or individuals upon whom eligibility is to be based have not been working full time at managing the prospective Program Participant firm for a period specified by the Administration prior to making application to the Program;

"(iv) the prospective Program Participant is a tribally owned corporation whose chief executive officer (or chief operating officer) is other than a Native American, if the governing body of the Indian tribe certifies to the Administration that it was unable to hire a qualified Native American after conducting a national recruitment for such individual; or

"(v) the prospective Program Participant lacks reasonable prospects for future success despite access to one or more of the types of developmental assistance provided for in paragraph (13), unless such determination is supported by specific findings.".

SEC. 105. ENHANCING DUE PROCESS IN ELIGIBILITY DETERMINATIONS.

Section 7(j)(11)(H) of the Small Business Act (15 U.S.C. 636(j)(11)(H)) is amended—

(1) by striking "(H)" and inserting "(H)(i)"; and

(2) by adding at the end the following new clauses:

"(ii) The Associate Administrator for Minority Enterprise Development shall—

"(I) notify an applicant, in writing, of the denial of an application under clause (i), stating the specific determinations supported by specific findings in support of the denial; and

"(II) provide the applicant an opportunity to respond (or to modify the business organization of the applicant in response) to matters raised in the notice of denial and to seek a reconsideration of the application.

"(iii) If the application is denied upon reconsideration pursuant to clause (ii) and the denial is based upon determinations or findings not previously cited as a basis for the initial denial of the application, the Associate Administrator for Minority Enterprise Development shall provide the applicant an opportunity to respond to the determinations or findings not previously raised, or to modify the business organization of the applicant in response to such determinations or findings.".

SEC. 106. IMPROVING GEOGRAPHIC DISTRIBUTION OF PROGRAM PARTICIPANTS.

(a) ACTION PLAN REQUIRED.—The Administrator of the Small Business Administration shall develop an action plan for improving participation in the Minority Enterprise Development Program established by section 101 by firms across the Nation.

(b) CONTENTS OF THE ACTION PLAN.—In addition to such other matters as the Administrator deems appropriate, the action plan developed under subsection (a) shall address—

(1) an outreach program directed at small business concerns owned and controlled by socially and economically disadvantaged individuals eligible for program participation in those States with historically low rates of participation in the Minority Enterprise Development Program (and its predecessor program, the Minority Small Business and Capital Ownership Development Program); and

(2) improved implementation of section 8(a)(16)(B) of the Small Business Act (relating to geographic distribution of contracts awarded noncompetitively pursuant to section 8(a)(1) of such Act).

(c) PUBLIC PARTICIPATION.—In carrying out this section, the Administrator shall seek public comment on the proposals to be included in the action plan.

(d) SUBMISSION.—Not later than June 30, 1995, the action plan developed under subsection (a) shall be submitted to the Committees on Small Business of the Senate and House of Representatives.

PART B—BUSINESS DEVELOPMENT ASSISTANCE

SEC. 111. DEVELOPMENTAL ASSISTANCE AUTHORIZED FOR PROGRAM PARTICIPANTS.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended—

(1) in paragraph (13), in the matter preceding subparagraph (A), by striking "the stages of program participation specified in paragraph 12" and inserting "its Program participation"; and

(2) by striking paragraph (14) and inserting the following:

"(14) [Reserved].".

SEC. 112. EXPANDING THE ELIGIBLE USES FOR LOANS UNDER EXISTING LOAN PROGRAMS FOR PROGRAM PARTICIPANTS.

Section 7(a)(20)(A)(iii) of the Small Business Act (15 U.S.C. 636(a)(20)(A)(iii)) is amended by striking "to be used" and all that follows before the semicolon.

SEC. 113. TEST PROGRAM FOR THE USE OF SURETY BOND WAIVERS.

Section 7(j)(13)(D) of the Small Business Act (15 U.S.C. 636(j)(13)(D)) is amended—

(1) by striking clauses (i) through (iii);

(2) by striking "A maximum" and inserting "(i) A maximum";

(3) by striking ", except that, such exemptions may be granted under this subparagraph only if—" and inserting a period; and

(4) by adding at the end the following new clauses:

"(ii) The agency with contracting authority may, upon the request of the Program Participant, grant an exemption pursuant to clause (i), if—

"(I) the Program Participant provides certification, in the form prescribed by the Administration, that the firm was unable to obtain the requisite bonding from corporate surety bonding firms even with a guarantee issued by the Administration pursuant to title IV of the Small Business Investment Act of 1958;

"(II) the Program Participant has provided for the protection of persons furnishing materials or labor under the contract by arranging for—

"(aa) the direct disbursement of funds owed to such persons by the procuring agency or through an escrow account provided by any bank the deposits of which are insured by the United States Government; or

"(bb) irrevocable letters of credit (or other alternatives to surety bonding acceptable to the procuring agency); and

"(III) the award value of the contract for which the exemption is being sought does not exceed $1,000,000.

"(iii) The authority to grant an exemption under clause (ii) shall cease to be effective on September 30, 1997.".

SEC. 114. TARGETING SECTION 7(j) BUSINESS MANAGEMENT ASSISTANCE TO PROGRAM PARTICIPANTS.

Section 7(j)(1) of the Small Business Act (15 U.S.C. 636(j)(1)) is amended by striking "individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act" and inserting "participants in the Minority Enterprise Development Program established in paragraph (10)".

SEC. 115. OTHER ENHANCEMENTS TO THE SECTION 7(j) MANAGEMENT ASSISTANCE PROGRAM.

(a) FOCUS ON BUSINESS MANAGEMENT ASSISTANCE.—Section 7(j)(2)(E) of the Small Business Act (15 U.S.C. 636(j)(2)(E)) is amended to read as follows:

"(E) the furnishing of business development services and related professional services, especially accounting and legal services, with special emphasis on marketing, bid and proposal preparation, financial management, strategic business planning, and transition management planning for participants in the Minority Enterprise Development Program, that will foster the continued business development of the Program Participants after program graduation.".

(b) TWO-YEAR AUTHORIZATION.—Section 7(j)(5) of the Small Business Act (15 U.S.C. 636(j)(5)) is amended to read as follows:

"(5)(A) Financial assistance authorized in paragraph (1) may be provided through grants, cooperative agreements, or contracts.

"(B) Funds appropriated to carry out paragraph (1) shall remain available for obligation by the Administration during the fiscal year succeeding the fiscal year for which the funds were appropriated.

"(C) Recipients of financial assistance awarded pursuant to paragraph (1) may expend such funds prior to the expiration date of the grant, cooperative agreement, or contract under which the funds were awarded.".

(c) ELIGIBILITY FOR CERTAIN EDUCATIONAL INSTITUTIONS.—Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended—

(1) in paragraph (2)—

(A) by redesignating subparagraphs (A) through (E) as subparagraphs (B) through (F), respectively; and

(B) by inserting before subparagraph (B), as redesignated, the following new subparagraph:

"(A) business executive education programs conducted by institutions of graduate business education for owners or managers of small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 8(d)(3)(C));"; and

(2) by striking paragraph (4) and inserting the following:

"(4) In making awards pursuant to paragraph (1) to institutions of graduate business education eligible under paragraph (2)(A), the Administration shall give preference to institutions that have previously provided such programs, with the greatest preference being accorded to institutions that have provided such programs for a period of not less than 10 consecutive years.".

SEC. 116. DEVELOPMENTAL TEAMING.

(a) PROGRAM ESTABLISHED.—There is established a Developmental Teaming Program

(hereafter in this section referred to as the "Program") within the Minority Enterprise Development Program established under section 101.

(b) PURPOSE.—The purpose of the Program shall be to foster the business development and long-term business success of firms participating in the Minority Enterprise Development Program by encouraging the formation of teaming arrangements and long-term strategic business alliances between such firms and firms that have graduated from the Minority Enterprise Development Program (and its predecessor program, the Minority Small Business and Capital Ownership Development Program).

(c) PROGRAM PARTICIPANTS.—

(1) ASSISTANCE RECIPIENTS.—Small business concerns owned and controlled by socially and economically disadvantaged individuals that are participants in the Business Development (Preferential Contracting) Phase of the Minority Enterprise Development Program shall be eligible to participate in the Program (and shall be referred to as "Program Participants" for purposes of this section).

(2) ASSISTANCE PROVIDERS.—A small business concern owned and controlled by socially and economically disadvantaged individuals that is a graduate (or a current Program Participant in the Transitional Stage) of the Business Development (Preferential Contracting Phase) of the Minority Enterprise Development Program (and its predecessor program, the Minority Small Business and Capital Ownership Development Program) shall be eligible to participate in the Program and to furnish developmental assistance to Program Participants through a developmental teaming agreement, approved pursuant to subsection (d). (For purposes of this section, firms having, or seeking to establish, a developmental teaming agreement shall be referred to as "Developmental Teaming Partners").

(d) TEAMING AGREEMENTS.—

(1) ASSISTANCE AUTHORIZED.—A Developmental Teaming Partner may provide to a Program Participant one or more of the following forms of developmental assistance and training:

(A) General business management (including financial management, organizational management and personnel management).

(B) Business development, marketing, and proposal preparation.

(C) Process engineering (including production, inventory control, and quality assurance).

(D) Award of subcontracts on a noncompetitive basis.

(E) Technology transfer.

(F) Financial assistance (including loans, loan guarantees, surety bonding, advance payments, and accelerated progress payments).

(G) Such other forms of assistance designed to foster the development of the Program Participant, contained in a developmental teaming agreement approved pursuant to paragraph (3).

(2) CONTENT OF AGREEMENTS.—In addition to such other matters as the parties may deem appropriate, each developmental teaming agreement shall include the matters described in subsection (e).

(3) APPROVAL REQUIRED.—Each developmental teaming agreement shall be approved by the Administration before—

(A) the furnishing of any type of developmental assistance to a Program Participant pursuant to such agreement; or

(B) the Developmental Teaming Partner becomes eligible for any of the incentives authorized by subsection (f).

(4) ACTION BY THE ADMINISTRATION.—Each proposed developmental teaming agreement shall be reviewed and approved (or denied approval) not later than 45 days after the receipt of such agreement by the Administration. A denial of approval shall state specific reasons for the denial and shall afford the applicant an opportunity for reconsideration. Every reasonable effort shall be made by the Administration to act upon matters relating to the administration of an approved developmental teaming agreement not later than 30 days after the receipt of such agreement by the Administration.

(e) CONTENT OF THE AGREEMENT.—

(1) FORMS OF ASSISTANCE.—Each developmental teaming agreement shall specify forms of business development assistance to be furnished by the Developmental Teaming Partner and indicate how these forms of assistance are designed to advance the approved business plan of the Program Participant.

(2) MEASURES OF SUCCESS.—Each developmental teaming agreement shall include specific milestones or benchmarks which will permit objective measurement of whether the agreement has advanced the business development of the Program Participant.

(3) DURATION OF AGREEMENT.—Each developmental teaming agreement between a Program Participant and a Developmental Assistance Provider may be for a term not to exceed 3 years, with the option of the parties to renew the agreement upon its expiration for an additional term of not to exceed 2 years.

(4) TERMINATION OF AGREEMENT.—The developmental teaming agreement shall include provisions regarding the termination of the agreement that meet the standards of subsection (h).

(f) PARTICIPATION AS SUBCONTRACTOR.—A Developmental Teaming Partner may be awarded a subcontract under a contract awarded pursuant to section 8(a)(1) of the Small Business Act, without regard to the subcontracting limitations of section 8(a)(14) of such Act, if—

(1) the contract was awarded to a Program Participant with which such firm has an approved developmental teaming agreement; and

(2) the subcontract award was approved as part of the developmental teaming agreement (or subsequently approved by the Administration).

(g) AFFILIATION OR CONTROL.—For the purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) shall be found on the basis that a Program Participant is being furnished (or has entered into agreement to be furnished) developmental assistance pursuant to a developmental teaming agreement, approved pursuant to subsection (d).

(h) TERMINATION OF AGREEMENTS.—

(1) BY A PROGRAM PARTICIPANT.—A Program Participant may voluntarily terminate a developmental teaming agreement after giving not less than 30 days advance notice to its Developmental Teaming Partner.

(2) BY A DEVELOPMENTAL ASSISTANCE PROVIDER.—

(A) WITHDRAWAL FROM PROGRAM.—A Developmental Teaming Partner may terminate its developmental teaming agreement with a Program Participant by withdrawing from the Program after giving not less than 30 days advance notice to the Administration and to each of the Program Participants for which the firm was a Developmental Teaming Partner.

(B) TERMINATING AN AGREEMENT FOR CAUSE.—

(i) IN GENERAL.—A Developmental Teaming Partner may terminate its developmental teaming agreement with a Program Participant for cause in accordance with the procedures in clause (ii).

(ii) NOTICE.—In terminating an agreement under clause (i), the following procedures shall apply:

(I) IN GENERAL.—The Program Participant shall be furnished a written notice of the proposed termination under clause (i), not less than 30 days prior to the effective date of such proposed termination, that states the specific reasons for the proposed termination.

(II) RESPONSE.—The Program Participant shall have not more than 30 days to respond to such notice of proposed termination, rebutting any findings believed to be erroneous and offering a remedial program.

(III) FINAL ACTION.—After giving the Program Participant's response prompt consideration, the Developmental Teaming Partner shall either withdraw the notice of proposed termination or issue a notice of termination.

(iii) NONREVIEWABILITY.—The decision of the Developmental Teaming Partner regarding a termination for cause, conforming to the procedures of clause (ii), shall be final and shall not be subject to review by the Administration.

(3) BY THE SMALL BUSINESS ADMINISTRATION.—

(A) IN GENERAL.—The Administration may terminate the participation of a Developmental Teaming Partner or a Program Participant for cause in accordance with subparagraph (B).

(B) PROCEDURES.—In terminating an agreement under subparagraph (A), the following procedures shall apply:

(i) NOTICE.—The firm proposed for termination from the Program shall be furnished a written notice of the proposed termination, not less than 30 days prior to the effective date of such proposed termination, that states the specific reasons for the proposed termination.

(ii) RESPONSE.—The notice of proposed termination shall provide 30 days for the firm proposed for termination to respond to such notice.

(iii) FINAL ACTION.—After giving prompt consideration to the response of the firm proposed for termination, the Administration shall either withdraw the notice of proposed termination or issue a notice of termination.

(C) REVIEWABILITY.—A decision by the Administration to terminate for cause the participation of a firm in the Program shall be final, but may be appealed pursuant to section 8(a)(9) of the Small Business Act.

(i) DURATION OF THE PROGRAM.—

(1) IN GENERAL.—Business concerns eligible to participate in the Program may enter into developmental teaming agreements during the period commencing on the effective date of the regulations required by subsection (j) and ending on September 30, 1997.

(2) TERMINATION.—The Program shall terminate on September 30, 2002.

(j) REGULATIONS.—The Administrator of the Small Business Administration shall prescribe regulations to carry out the Developmental Teaming Program. Proposed regulations shall be published not later than 90 days after the date of enactment of this Act. Final regulations shall be promulgated not later than 180 days after the date of enactment of this Act.

(k) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) SMALL BUSINESS CONCERNS.—The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act and the regulations promulgated pursuant to such section.

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term "small business concern owned and controlled by socially and economically disadvantaged individuals" has the same meaning as in section 8(d)(3)(C) of the Small Business Act.

(3) MINORITY ENTERPRISE DEVELOPMENT PROGRAM.—The term "Minority Enterprise Development Program" means the program authorized by section 7(j)(10)(A) of the Small Business Act (as amended by section 101).

(4) GRADUATED.—The term "graduated" has the same meaning as in section 7(j)(10)(H) of the Small Business Act.

PART C—IMPROVING ACCESS TO EQUITY FOR PROGRAM GRADUATES

SEC. 121. CONTINUED CONTRACT PERFORMANCE.

Section 8(a)(21) of the Small Business Act (15 U.S.C. 637(a)(21) is amended—

(1) in subparagraph (B), by striking "The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if 1 of the following conditions exist:" and inserting "The requirements of subparagraph (A) may be waived, under any of the following circumstances:"; and

(2) by striking subparagraph (C) and inserting the following:

"(C)(i) Except as provided in clause (ii), a request for a waiver pursuant to subparagraph (B) shall be submitted prior to the actual relinquishment of ownership or control.

"(ii) Under the circumstances described in subparagraph (B)(iii), the waiver request shall be made as soon as practicable after the incapacity or death occurs.".

SEC. 122. CONTINUED PROGRAM PARTICIPATION.

Section 7(j)(11)(D) of the Small Business Act (15 U.S.C. 636(j)(11)(D)) is amended to read as follows:

"(D)(i) A Program Participant shall remain eligible for participation in the Program after a transfer of an ownership interest in the firm if ownership and control (as required by section 8(a)(4)) is—

"(I) retained by the socially and economically disadvantaged individuals upon whom Program eligibility is based; or

"(II) acquired by a small business concern owned and controlled by socially and economically disadvantaged individuals who have graduated from the Program or otherwise exited the Program through a means other than a termination proceeding.

"(ii) A Program Participant shall remain eligible for participation in the Program after transfer of ownership and control (as required by section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). Unless graduated or terminated, the Program Participant shall be eligible for a period of continued Program Participation not to exceed the period described in paragraph (15).

"(iii) A Program Participant that is a tribally owned corporation may remain eligible for participation in the Program with other than a Native American as the firm's chief executive officer (or chief operating officer), if the governing body of the Indian tribe certifies to the Administration that it was unable to hire a qualified Native American after conducting a national recruitment for such an individual.".

PART D—CONTRACT AWARD AND ELIGIBILITY MATTERS

SEC. 131. CONTRACT AWARD PROCEDURES.

Section 8(a)(1) of the Small Business Act (15 U.S.C. 637(a)(1)) is amended—

(1) by striking subparagraphs (A), (B), and (C); and

(2) by striking "(a)(1)" and inserting the following:

"(a)(1)(A) The Administration shall ensure that contracts sufficient to satisfy the contract support levels identified by participants in the Minority Enterprise Development Program established in section 7(j)(10) are designated by the various Federal agencies for award pursuant to this subsection.

"(B) Except as provided in subparagraph (D), the award of contracts under this section shall be made on a noncompetitive basis by the agency offering the contracting opportunity to the Program Participant selected for the award, and determined to be responsible by such agency. The award shall be made at a fair market price.

"(C)(i) The Administration shall determine the eligibility of the Program Participant to receive the award in accordance with the eligibility criteria listed in paragraph (16).

"(ii) With respect to an individual contracting opportunity, the Administration may provide, upon a request by the Program Participant, assistance with respect to—

"(I) the negotiation of the terms and conditions of the award; and

"(II) the resolution of controversies arising from the performance of the contract prior to such contract performance controversies becoming formal contract disputes within the meaning of the Contract Disputes Act of 1978;

"(iii) In the event of an adverse decision by an agency regarding a contracting opportunity, the Administrator may—

"(I) not later than 5 days after receiving notice of such adverse decision, file a notice of intent to appeal with the head of the agency; and

"(II) not later than 15 days after receiving such notice, file an appeal with the head of the agency, requesting reconsideration of the adverse decision.

"(iv) Upon receipt of the notice of intent to file an appeal under clause (iii)(I), further action regarding award of the contract shall be suspended, unless the head of the agency makes a written determination, supported by specific findings, that urgent and compelling circumstances that significantly affect the interests of the United States will not permit reconsideration of the adverse decision.

"(v) If the head of the agency sustains the adverse decision upon reconsideration, the decision by the head of the agency shall be in writing and shall be supported by specific findings.

"(vi) An adverse decision regarding the responsibility of a Program Participant shall be decided pursuant to subsection (b)(7).

"(vii) For the purposes of this subparagraph, an adverse decision includes a decision by the contracting officer responsible for the contracting opportunity—

"(I) failing to respond to a request from the Administration to make a specific contracting opportunity available for award pursuant to this subsection;

"(II) declining to make available for award under this subsection a contracting opportunity (or class of contracting opportunities) or failing to support such a determination with specific findings;

"(III) finding a Program Participant to be ineligible for award of a contracting opportunity on the basis of a determination of nonresponsibility; or

"(IV) failing to reach agreement with the Program Participant with respect to the terms and conditions of a contract selected for award under this subsection.".

SEC. 132. TIMELY DETERMINATION OF ELIGIBILITY FOR CONTRACT AWARD.

(a) IN GENERAL.—Section 8(a)(16) of the Small Business Act (15 U.S.C. 637(a)(16)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (E);

(2) by striking subparagraph (A) and inserting the following:

"(A) Upon receiving notification that a Federal agency intends to consider a Program Participant for award of a contract pursuant to this subsection (on a competitive or noncompetitive basis), the Administration shall promptly notify the agency regarding the eligibility of the Program Participant for award of the contract, and shall identify all matters that could reasonably be expected to render the Program Participant ineligible at the time of the contract award."; and

(3) by inserting after subparagraph (A) (as added by paragraph (2)) the following new subparagraphs:

"(B) A Program Participant may be found to be ineligible for award of the contract pursuant to this subsection, if—

"(i) the award of the contract would result in the Program Participant failing to attain its business activity targets established pursuant to section 7(j)(10)(I); or

"(ii) the Program Participant has failed to make the submissions required under paragraph (6)(B).

"(C) A small business concern owned and controlled by socially and economically disadvantaged individuals that has completed its Program Participation term pursuant to section 7(j)(15) shall be eligible for award if—

"(i) in the case of a contract to be competitively awarded, the prospective contract recipient was a Program Participant eligible for award of the contract on the date specified for receipt of offers, and such firm had timely submitted an offer (including price); or

"(ii) in the case of a contract to be noncompetitively awarded, the prospective contract recipient was a Program Participant eligible for award of the contract on the date specified by the agency contracting officer for the submission of an offer (including price).

"(D) If the Administration determines that a Program Participant is ineligible for consideration for award of a contract under subparagraph (B) or (C), the determination shall be supported by specific findings. The determination (and supporting findings) shall be furnished to the Program Participant and to the contracting officer for the agency providing the contracting opportunity.".

(b) CONFORMING AMENDMENTS.—Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (A) and inserting the following:

"(A) [Reserved].''; and

(B) by striking subparagraph (D) and inserting the following:

"(D) Subsequent to the award of a contract under this subsection, if requested by the recipient of the contract, the Administration shall not publicly disclose the agency's estimate of the fair market price.";

(2) in paragraph (7), by striking subparagraph (A) and inserting the following:

"(A) [Reserved].";

(3) in paragraph (12)(A), by striking "eligible to receive subcontracts" and inserting "eligible for contract awards"; and

(4) in paragraph (9)(B)—

(A) in clause (iii), by striking "and";

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) a determination of ineligibility for award of contract pursuant to paragraph (16)(B); and".

SEC. 133. COMPETITION REQUIREMENTS.

(a) INDEFINITE QUANTITY AND DELIVERY CONTRACTS.—Section 8(a)(1)(D) of the Small Business Act (15 U.S.C. 637(a)(1)(D)) is amended—

(1) by redesignating clause (ii) as clause (iv); and

(2) by inserting after clause (i) the following new clause:

"(ii) Whenever a requirements-type contract (including a task order contract, indefinite quantity contract, or indefinite delivery contract) is to be awarded, the thresholds for competition required under clause (i)(II) shall be calculated on the basis of the estimated total value of the contract.".

(b) AUTHORIZATION FOR ADDITIONAL NONCOMPETITIVE CONTRACT AWARDS.—Section 8(a)(1)(D) of the Small Business Act (15 U.S.C. 637(a)(1)(D)) is amended by inserting after clause (ii) (as added by subsection (a)) the following new clause:

"(iii) The Associate Administrator for Minority Enterprise Development, on a nondelegable basis, may authorize the noncompetitive award of contracts in excess of the amounts specified in clause (i)(II) to a Program Participant, if—

"(I) such Program Participant is an emerging small business concern;

"(II) the award of such contracts would contribute substantially to the development of the Program Participant in accordance with its business plan, including attainment of the business activity targets established pursuant to section 7(j)(10)(I), by the time such firm enters the transitional stage;

"(III) the award value of the contract does not exceed twice the amounts specified in clause (i)(II); and

"(IV) the aggregate dollar value of awards pursuant to this clause does not exceed $20,000,000.".

SEC. 134. STANDARD INDUSTRIAL CLASSIFICATION CODES.

(a) APPROVAL OF CODES.—As part of the process of developing and maintaining a business plan pursuant to section 7(j)(10)(D) of the Small Business Act, a Program Participant may designate its capabilities to perform contracting opportunities under one or more standard industrial classification codes.

(b) DETERMINATIONS BY PROCURING AGENCY REGARDING APPLICABLE STANDARD INDUSTRIAL CLASSIFICATION CODE.—The standard industrial classification code assigned to a contracting opportunity by the responsible contracting officer shall apply, unless modified by the contracting officer after considering additional information furnished by the Administration or from other sources.

(c) EFFECT OF RESPONSIBILITY DETERMINATIONS.—The Administration shall be bound by a determination of responsibility by the agency contracting officer with respect to a Program Participant being considered for award of a contract pursuant to section 8(a) of the Small Business Act.

(d) CONFORMING AMENDMENT.—Section 8(a)(7) of the Small Business Act (15 U.S.C. 637(a)(7)) (as amended by section 132(b)(2)) is amended to read as follows:

"(7) [Reserved].".

SEC. 135. USE OF CONTRACT SUPPORT LEVELS.

Section 7(j)(10)(D) of the Small Business Act (15 U.S.C. 636(j)(10)(D)) is amended by adding at the end the following new clause:

"(v) The forecasts of overall business activity contained in the business plan of a Program Participant or the estimate contained in the section 8(a) contract support level of such firm shall not be used by the Administration to make a determination that such firm is ineligible for the award of a contract to be awarded pursuant to section 8(a).".

SEC. 136. BUSINESS MIX REQUIREMENTS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended—

(1) in subparagraph (D)—

(A) in clause (iii), by striking "contracts awarded" and inserting "contracts awarded noncompetitively"; and

(B) in clause (iv)(I), by striking "contracts awarded" and inserting "contracts awarded noncompetitively"; and

(2) in subparagraph (I)—

(A) in clause (i)—

(i) by striking "for contracts awarded other than pursuant to section 8(a)" and inserting "through contracts other than contracts awarded noncompetitively pursuant to section 8(a)"; and

(ii) by striking "will engage a" and inserting "will engage in a";

(B) in clause (iii)—

(i) by redesignating subclauses (II) through (V) as subclauses (III) through (VI), respectively;

(ii) by striking subclause (I) and inserting the following:

"(I) establish business activity targets applicable to Program Participants during each year of Program participation, which reflect a consistent increase in new contracts awarded other than pursuant to section 8(a), so that not more than 20 percent of the dollar value of the Program Participant's business base (as a percentage of total sales) at the beginning of the ninth year of Program participation is derived from contracts awarded pursuant to section 8(a);

"(II) provide that the business activity targets established pursuant to subclause (I) reflect that not more than 50 percent of the dollar value of the new contracts awarded during the fifth and succeeding years of Program Participation be awarded pursuant to section 8(a) on a noncompetitive basis;";

(iii) by striking subclause (IV), as redesignated, and inserting the following:

"(IV) require that a Program Participant in the transitional stage of Program participation certify compliance with its business activity targets (or with any program of remedial measures that may have been imposed pursuant to subclause (VI) for failing to attain such targets) to eligible for award of a contract pursuant to section 8(a);";

(iv) in subclause (V), as redesignated, by striking "and" at the end;

(v) by striking subclause (VI), as redesignated, and inserting the following:

"(VI) authorize the Administration to require a Program Participant that has failed to attain a business activity target to undertake a program of remedial measures designed to assist the firm to reduce its dependence on contracts awarded pursuant to section 8(a); and"; and

(vi) by adding at the end the following new subclause:

"(VII) authorize the Administration to limit the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a), especially those awarded noncompetitively, if the firm has not made substantial progress toward attaining its business activity targets."; and

(C) by adding at the end the following new clause:

"(iv) Actions by the Administration relating to enforcing compliance with business activity targets shall not be reviewable pursuant to section 8(a)(19), unless such action is a termination from further Program participation.".

SEC. 137. ENCOURAGING SELF-MARKETING.

(a) ELIMINATION OF REGULATORY LIMITATIONS.—In accordance with the schedule for the issuance of revised regulations contained in section 601(a), the Administration shall promulgate such regulations as may be necessary to eliminate regulatory limitations on self-marketing by Program Participants, including limitations relating to so-called "National Buys" and "Local Buys".

(b) CONFORMING AMENDMENT.—Section 8(a)(11) of the Small Business Act (15 U.S.C. 637(a)(11)) is amended to read as follows:

"(11) [Reserved].".

SEC. 138. BUNDLING OF CONTRACTOR CAPABILITIES.

(a) IN GENERAL.—Section 8(a)(14) of the Small Business Act (15 U.S.C. 637(a)(14)) is amended to read as follows:

"(14)(A) Except as provided in subparagraph (B), a contract shall not be awarded pursuant to this subsection unless the small business concern complies with the requirements of section 15(o).

"(B)(i) Whenever the Administration determines that a proposed contract opportunity represents a bundling of contract requirements as defined by section 3(n), a Program Participant may propose a team of subcontractors meeting the requirements of clause (ii) without regard to the requirements of section 15(o) or regulations of the Administration regarding findings of affiliation or control, either direct or indirect.

"(ii) The subcontracting team proposed by a Program Participant may include—

"(I) other Program Participants;

"(II) other small business concerns;

"(III) business concerns other than small business concerns, whose aggregate participation may not represent more than 25 percent of the anticipated total value of the contract; and

"(IV) historically black colleges and universities and other minority institutions.".

(b) DEFINITION.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

"(n) CONTRACT BUNDLING.—For purposes of contracting opportunities subject to sections 8(a) and 15, the terms 'contract bundling' and 'bundling of contract requirements' mean the practice of consolidating two or more procurement requirements of the type that were previously solicited and awarded as separate smaller contracts into a single large contract solicitation likely to be unsuitable for award to a small business concern due to—

"(1) the diversity and size of the elements of performance specified;

"(2) the aggregate dollar value of the anticipated award;

"(3) the geographical dispersion of the contract performance sites; or

"(4) any combination of the factors described in paragraphs (1), (2), and (3).".

(c) CONFORMING AMENDMENT.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by striking "If a proposed procurement" and all that follows through "prime

contract participation unlikely," and inserting the following: "If a proposed procurement represents a bundling of contract requirements, as defined in section 3(n),".

PART E—TRIBALLY OWNED CORPORATIONS

SEC. 141. MANAGEMENT AND CONTROL OF BUSINESS OPERATIONS.

Section 8(a)(4)(B)(ii) of the Small Business Act (15 U.S.C. 637(a)(4)(B)(ii)) is amended to read as follows:

"(ii) in the case of a tribally owned corporation, an individual designated by the Indian tribe (or the board of directors of a wholly owned entity of such tribe), who shall be a Native American if such individual is available; or".

SEC. 142. JOINT VENTURES.

(a) IN GENERAL.—Section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)) is amended to read as follows:

"(15)(A) Except as provided in subparagraph (B), a contract may be awarded pursuant to this subsection to a joint venture owned and controlled by a Program Participant, notwithstanding the size status of such joint venture, if the Program Participant—

"(i) is owned and controlled by an Indian tribe;

"(ii) owns at least 51 percent of the joint venture;

"(iii) is located and performs most of its activities on the reservation of such Indian tribe; and

"(iv) employs members of such tribe for at least 50 percent of the work force of such joint venture.

"(B) A contract may not be awarded to a joint venture pursuant to subparagraph (A) if an Indian tribe owns and controls one or more Program Participants who are currently joint venturers on more than 5 contracts awarded pursuant to subparagraph (A).".

(b) DEFINITIONS.—

(1) INDIAN TRIBE.—Section 3 of the Small Business Act (15 U.S.C. 632) (as amended by section 139(b)) is amended by adding at the end the following new subsection:

"(o) INDIAN TRIBE.—For purposes of this Act, the term 'Indian tribe' means an Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in section 3 of the Alaska Native Claims Settlement Act that—

"(1) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(2) is recognized as such by the State in which such tribe, band, nation, group, or community resides.".

(2) NATIVE HAWAIIAN ORGANIZATION.—Section 3 of the Small Business Act (15 U.S.C. 632) (as amended by paragraph (1)) is amended by adding at the end the following new subsection:

"(p) NATIVE HAWAIIAN ORGANIZATION.—For purposes of this Act, the term 'Native Hawaiian organization' means a community service organization serving Native Hawaiians in the State of Hawaii that is—

"(1) a not-for-profit organization chartered by the State of Hawaii;

"(2) controlled by Native Hawaiians; and

"(3) engaged in business activities that will principally benefit such Native Hawaiians.".

(3) CONFORMING AMENDMENT.—Section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13)) is amended to read as follows:

"(13) [Reserved].".

SEC. 143. RULE OF CONSTRUCTION REGARDING THE BUY INDIAN ACT.

A contract awarded pursuant to section 8(a) of the Small Business Act to a small business concern owned and controlled by members of an Indian tribe (or a wholly owned business entity of such tribe) shall be considered to be in compliance with section 23 of the Act of June 25, 1910 (25 U.S.C. 47).

PART F—CONTRACT ADMINISTRATION MATTERS

SEC. 151. ACCELERATED PAYMENT.

Section 8(a)(1) of the Small Business Act (15 U.S.C. 637(a)(1)) is amended by adding at the end the following new subparagraph:

"(E)(i) Any contract awarded pursuant to subparagraph (B) to a Program Participant in the developmental stage of the Program shall include a payment term requiring payment of any invoice, progress payment request, or other authorized request for payment, not later than 20 days after receipt of a proper invoice or other form of payment request.".

SEC. 152. EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS.

Section 8(a)(1)(E) of the Small Business Act (15 U.S.C. 637(a)(1)(E)) (as added by section 151) is amended by adding at the end the following new clause:

"(ii)(I) A Federal agency awarding a contract under this subsection shall make every reasonable effort to respond in writing to any written request made to a contracting officer with respect to a matter relating to the administration of such contract, not later than 15 days such request.

"(II) If the contracting officer is unable to reply before the expiration of the 15-day period described in subclause (I), the contracting officer shall transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

"(III) The provisions of this subparagraph do not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 nor create any new rights pursuant to such Act.".

SEC. 153. AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION.

Section 8(a)(1)(E) of the Small Business Act (15 U.S.C. 637(a)(1)(E)) (as amended by sections 151 and 152) is amended by adding at the end the following new clause:

"(iii)(I) Except as provided in subclause (II), an agency awarding a contract pursuant to subparagraph (B) shall make available, upon the request of a Program Participant, an alternative means of dispute resolution pursuant to subchapter IV of chapter 5, of title 5, United States Code.

"(II) In carrying out this clause, the agency need not provide an alternative dispute resolution procedure if the agency makes a written determination, supported by specific findings, citing one or more of the conditions in section 572(b) of title 5, United States Code, or such other specific reasons, that alternative dispute resolution procedures are inappropriate for the resolution of the dispute for which such procedures were sought under the contract.".

PART G—PROGRAM ADMINISTRATION

SEC. 161. SIMPLIFICATION OF ANNUAL REPORT TO CONGRESS.

Section 7(j)(16)(B)(v) of the Small Business Act (15 U.S.C. 636(j)(16)(B)(v)) is amended to read as follows:

"(v) The total dollar value of receipts received during the most recently completed program year from contracts awarded pursuant to section 8(a), and such amount expressed as a percentage of the total sales of—

"(I) all firms participating in the Program during the preceding fiscal year; and

"(II) firms in each of the 9 years of Program participation.".

SEC. 162. REDUCTION IN REPORTING BY PROGRAM PARTICIPANTS.

Section 8(a)(20)(A) of the Small Business Act (15 U.S.C. 637(a)(20)(A)) is amended by striking "semiannually report" and inserting "report, not less often than annually,".

TITLE II—CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS

PART A—CIVILIAN AGENCIES PROGRAM

SEC. 201. PROCUREMENT PROCEDURES.

Section 8(c) of the Small Business Act (15 U.S.C. 637(c)) is amended to read as follows:

"(c) PROCUREMENT PROCEDURES.—

"(1) IN GENERAL.—For the purpose of attaining an agency's goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to section 15(g)(1), the head of a participating executive agency may enter into contracts using—

"(A) less than full and open competition, by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in subsection (d)(3)(C); and

"(B) a price evaluation preference, of not to exceed 10 percent, when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

"(2) DEFINITION.—For the purposes of this subsection, the term 'participating executive agency' means a Federal agency, as defined in section 3(b), in the executive branch of the Federal Government, other than the Department of Defense.".

SEC. 202. IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.

(a) IN GENERAL.—The Federal Acquisition Regulation shall be amended to provide uniform implementation by each executive agency choosing to participate in the program authorized in section 8(c) of the Small Business Act (as amended by section 201).

(b) MATTERS TO BE ADDRESSED.—The provisions of the Federal Acquisition Regulation prescribed pursuant to subsection (a) shall include—

(1) conditions for the use of advance payments;

(2) provisions for contract payment terms that provide for—

(A) accelerated payment for work performed during the period for contract performance; and

(B) full payment for work performed;

(3) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to section 8(c)(1)(B) of the Small Business Act (as amended by section 201) to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(4)(A) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

(B) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

SEC. 203. SUNSET.

The amendments made by section 201 shall cease to be effective on October 1, 2000.

PART B—ELIGIBILITY DETERMINATIONS REGARDING STATUS

SEC. 211. IMPROVED STATUS PROTEST SYSTEM.

Section 7(j)(10)(J) of the Small Business Act (15 U.S.C. 636(j)(10)(J)) is amended by striking clause (ii) and inserting the following new clauses:

"(ii) A protest may be brought regarding a self-certification by a business concern regarding its status as a small business concern owned and controlled by socially and economically disadvantaged individuals by—

"(I) another person with a direct economic interest in the award of the contract or subcontract under which such business has allegedly made the false certification regarding its status as a small business concern owned and controlled by socially and economically disadvantaged individuals;

"(II) a prime contractor receiving specific and credible information that an actual or prospective subcontractor or supplier has falsely certified its status as a small business concern owned and controlled by socially and economically disadvantaged individuals;

"(III) a contracting officer receiving a self-certification regarding an actual or prospective contractor's status, which such officer reasonably believes to be false; or

"(IV) the Associate Deputy Administrator for Minority Enterprise Development and Government Contracting of the Small Business Administration (or any successor position).

"(iii) The Office of Hearings and Appeals shall hear appeals regarding the status of a concern as a small business concern owned and controlled by socially and economically disadvantaged individuals for purposes of any program or activity conducted under section 8(d) or any other Federal law that refers to such section for a definition of program eligibility.

"(iv) A decision issued pursuant to clause (iii) shall—

"(I) be made available to all parties to the proceeding;

"(II) be published in full text; and

"(III) include findings of fact and conclusions of law, with specific reasons supporting such findings and conclusions, on each material issue of fact and law of decisional significance regarding the disposition of the protest.

"(v) A decision issued pursuant to clause (iii) shall be considered a final agency action, and shall be subject to judicial review under section 553 of title 5, United States Code.

"(vi) If a firm engages in a pattern of misrepresentations regarding the status of the firm in violation of section 16(d)(1), the Administration or the aggrieved executive agency shall initiate an action to impose an appropriate penalty under section 16(d)(2).".

SEC. 212. CONFORMING AMENDMENT.

Section 7(j)(11)(F) of the Small Business Act (15 U.S.C. 636(j)(11)(F)) is amended by—

(1) striking clause (vii); and

(2) redesignating clause (viii) as clause (vii).

TITLE III—EXPANDING SUBCONTRACTING OPPORTUNITIES

SEC. 301. EVALUATING SUBCONTRACT PARTICIPATION IN AWARDING CONTRACTS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended—

(1) in paragraph (4), by striking subparagraphs (A) through (D) and inserting the following:

"(4)(A) Each solicitation for the award of a contract (or subcontract) with an anticipated value of $1,000,000, in the case of a contract for construction (including repair, alteration, or demolition of existing construction) or $500,000, in the case of a contract for all other types of services or supplies, that can reasonably be expected to offer opportunities for subcontracting, shall—

"(i) in the case of a Federal contract to be competitively awarded, include solicitation provisions described in subparagraph (B);

"(ii) in the case of a Federal contract to be noncompetitively awarded, require submission and acceptance of a subcontracting plan pursuant to subparagraph (C); and

"(iii) in the case of a subcontract award, require submission and acceptance of a subcontracting plan pursuant to subparagraph (D).

"(B) With respect to subcontract participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, the solicitation shall—

"(i) specify minimum percentages for subcontract participation for an offer to be considered responsive whenever practicable;

"(ii) assign a weight of not less than the numerical equivalent of 5 percent of the total of all evaluation factors to a contract award evaluation factor that recognizes incrementally higher subcontract participation rates in excess of the minimum percentages;

"(iii) require the successful offeror to submit a subcontracting plan that incorporates the information described in paragraph (6); and

"(iv) assign a significant weight in any evaluation of past performance by the offerors in attaining subcontract participation goals.

"(C)(i) Each small business concern apparent successful offeror shall negotiate—

"(I) a goal for the participation of small business concerns and for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals; and

"(II) a plan for the attainment of the goals that incorporates the information prescribed in paragraph (6).

"(ii) The goals and plan shall reflect the maximum practicable opportunity for participation of small business concerns in the performance of the contract, considering the matters described in subparagraph (F)(iii). If, within the time limits prescribed in the Federal acquisition regulations, the apparent successful offeror fails to negotiate such a subcontracting plan, such offeror shall be ineligible for contract award.

"(D) An apparent subcontract awardee shall negotiate with the prime contractor (or higher-tier subcontractor) a goal for the participation of small business concerns and for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals, and a plan for the attainment of those goals which incorporates the information prescribed in paragraph (6). Such goals and plan shall reflect the maximum practicable opportunity for participation of such small business concerns in the performance of the contract, considering the matters described in subparagraph (F)(iii).";

(2) by striking paragraph (5) and inserting the following:

"(5) [Reserved].''; and

(3) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G), respectively; and

(B) by inserting the following new subparagraph (B):

"(B)(i) a listing of the small business subcontractors (including suppliers) who have actual or contingent awards for participation in the performance of the contract, identifying the work to be performed and the anticipated award value of the subcontracts; and

"(ii) assurances that the list of small business subcontractors described in clause (i) will be regularly revised to identify firms that have been removed from or substituted for previously listed firms, and annotated to reflect the reasons for any removal or substitution;".

SEC. 302. SUBCONTRACTING GOALS FOR CERTAIN SMALL BUSINESS CONCERNS.

Section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)) is amended to read as follows:

"(7)(A) Except as provided in subparagraph (B), paragraphs (4), (5), and (6) shall not apply to offerors who are small business concerns.

"(B) A small business concern owned and controlled by socially and economically disadvantaged individuals shall be required to negotiate a subcontracting plan for the use of emerging small business concerns owned and controlled by socially and economically disadvantaged individuals, if—

"(i) the prime contract was awarded pursuant to—

"(I) subsection (a) or (c) of section 8;

"(II) section 2323 of title 10, United States Code; or

"(III) any law that authorizes the award of a Federal contract as the result of a competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 8(d)(3)(C);

"(ii) the anticipated total value of the contract exceeds $20,000,000; and

"(iii) subcontracting opportunities are expected.".

SEC. 303. SMALL BUSINESS PARTICIPATION GOALS.

Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking "20 percent" and inserting "25 percent".

SEC. 304. IMPROVED NOTICE OF SUBCONTRACTING OPPORTUNITIES.

(a) USE OF THE COMMERCE BUSINESS DAILY AUTHORIZED.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following new subsection:

"(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES.—

"(1) IN GENERAL.—Notices of subcontracting opportunities may be submitted for publication in the Commerce Business Daily by—

"(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

"(B) a business concern which is a subcontractor or supplier (at any tier) to a contractor required to have a subcontracting plan pursuant to subsection (d) having a subcontracting opportunity in excess of $100,000.

"(2) CONTENTS OF NOTICE.—The notice of a subcontracting opportunity shall include—

"(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

"(B) the due date for the receipt of offers.".

(b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section.

(c) CONFORMING AMENDMENT.—Section 8(e)(1)(C) of the Small Business Act (15 U.S.C. 637(e)(1)(C)) is amended by striking "$25,000" each place it appears and inserting "$100,000".

TITLE IV—REPEALS AND TECHNICAL AMENDMENTS

PART A—REPEALS

SEC. 401. LOAN PROGRAM SUPERSEDED BY SECTION 7(a) LOAN PROGRAM.

(a) IN GENERAL.—Section 7(i) of the Small Business Act (15 U.S.C. 636(i)) is amended to read as follows:

"(i) [Reserved].".

(b) CONFORMING AMENDMENTS.—The Small Business Act (15 U.S.C. 601 et seq.) is amended—

(1) in section 2(d)(1), by striking "sections 7(i) and 7(j)" and inserting "section 7(j)";

(2) in section 4(c)(2), by striking "7(i),";

(3) in section 5(e)(3), by striking "sections 7(a)(4)(C) and 7(i)(1)" and inserting "section 7(a)(4)(C)";

(4) in section 7(j), by striking "sections 7(i), 7(j)(10), and 8(a)" each place it appears and inserting "paragraph (10) and section 8(a)"; and

(5) in section 7(k), by striking "sections 7(i), 7(j)(10), and 8(a)" and inserting "subsection (j)(10) and section 8(a)".

SEC. 402. SUPERSEDED LOAN PROGRAM RELATING TO ENERGY.

(a) IN GENERAL.—Section 7(*l*) of the Small Business Act (15 U.S.C. 636(*l*)) is amended to read as follows:

"(*l*) [Reserved].".

(b) CONFORMING AMENDMENTS.—Section 4(c)(2) of the Small Business Act (15 U.S.C. 601 et seq.) is amended by striking "7(l),".

SEC. 403. EMPLOYEE TRAINING PROGRAM OF LIMITED SCOPE.

Section 15(j)(13)(E) of the Small Business Act (15 U.S.C. 644(j)(13)(E)) is amended to read as follows:

"(E) [Reserved].".

SEC. 404. EXPIRED PROVISION.

Section 8(a)(2) of the Small Business Act (15 U.S.C. 637(a)(2)) is amended to read as follows:

"(2) [Reserved].".

SEC. 405. EXPIRED DIRECTION TO THE ADMINISTRATION.

Section 303(f) of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 637 note) is repealed.

PART B—TECHNICAL AMENDMENTS

SEC. 411. TECHNICAL AMENDMENTS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) in section 8(d)(10)(C) (15 U.S.C. 637(d)(10)(C)), by striking "in the case contractors" and inserting "in the case of contractors";

(2) in section 10—

(A) in subsection (a), by striking "the Senate Select Committee on Small Business"; and

(B) in subsection (b), by striking "to the Senate Select Committee on Small Business, and to the Committee on Small Business of the House of Representatives" and inserting "to the Committees on Small Business of the Senate and House of Representatives"; and

(3) in section 15(g)(1)—

(A) in the first sentence, by striking "The President" and inserting "(A) The President";

(B) by striking the second and third sentences and inserting the following:

"(B) The Governmentwide goals established pursuant to subparagraph (A) shall be—

"(i) for small business concerns, 20 percent of the total prime contracts for the fiscal year; and

"(ii) for small business concerns owned and controlled by socially and economically disadvantaged individuals, 8 percent of the total value of all prime contracts and subcontracts for the fiscal year.";

(C) in the fourth sentence, by striking "Notwithstanding the Government-wide goal" and inserting the following:

"(C) Notwithstanding the Governmentwide goal"; and

(D) in the fifth sentence, by striking "The Administration" and inserting the following:

"(D) The Administration".

TITLE V—DEFINITIONS

SEC. 501. HISTORICALLY UNDERUTILIZED BUSINESSES.

(a) DEFINITION.—Section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) is amended by striking "socially and economically disadvantaged small business concern" and inserting "historically underutilized business".

(b) TECHNICAL AMENDMENT.—Section 9(j)(2)(F) of the Small Business Act (15 U.S.C. 638(j)(2)(F)) is amended by striking "socially and economically disadvantaged small business concerns, as defined in section 8(a)(A)" and inserting "small business concerns owned and controlled by socially and economically disadvantaged individuals".

SEC. 502. EMERGING SMALL BUSINESS CONCERN.

(a) IN GENERAL.—Section 3 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end the following new subsection:

"(q) EMERGING SMALL BUSINESS CONCERN.—For purposes of sections 8 and 15, the term 'emerging small business concern' means a small business concern the size of which is less than or equal to 25 percent of the numerical size standard for—

"(1) in the case of a contracting opportunity being awarded by the Government, the standard industrial classification code assigned by a contracting officer; or

"(2) in all other cases, the standard industrial classification that encompasses the principal line of business of the business concern.".

(b) DELAYED APPLICABILITY TO THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.—For the purposes of the Small Business Competitiveness Demonstration Program, the amendment made by subsection (a) shall not supersede the definition of "emerging small business concern" provided in section 718(b) of the Small Business Competitiveness Demonstration Program Act of 1988.

TITLE VI—REGULATORY IMPLEMENTATION AND EFFECTIVE DATES

PART A—ASSURING TIMELY REGULATORY IMPLEMENTATION

SEC. 601. DEADLINES FOR ISSUANCE OF REGULATIONS.

(a) PROPOSED REGULATIONS.—Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations shall be published not later than 120 days after the date of enactment of this Act for the purpose of obtaining public comment pursuant to either section 22 of the Office of Federal Procurement Policy Act or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

(b) FINAL REGULATIONS.—Final regulations shall be published and become effective not later than 270 days after the date of enactment of this Act.

SEC. 602. REGULATORY IMPLEMENTATION OF PRIOR LEGISLATION.

(a) PROPOSED REGULATIONS.—Proposed amendments to the Federal Acquisition Regulation or the Small Business Administration regulations pertaining to the statutory provisions listed in subsection (c) shall be published not later than 30 days after the date of enactment of this Act for the purpose of obtaining public comment pursuant to either section 22 of the Office of Federal Procurement Policy Act or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

(b) FINAL REGULATIONS.—Final regulations implementing the amendments made by this Act shall be published and shall take effect not later than 120 days after the date of enactment of this Act.

(c) DELAYED REGULATIONS.—

(1) Section 203 of the Small Business Administration Reauthorization and Amendments Act of 1990 (15 U.S.C. 637 note; 104 Stat. 2818).

(2) Section 221 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (15 U.S.C. 636 note; 106 Stat. 999).

(3) Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (15 U.S.C. 632 note; 106 Stat. 999).

PART B—EFFECTIVE DATES

SEC. 611. EFFECTIVE DATES.

(a) EFFECTIVE DATE OF ACT.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS REQUIRING IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this Act which require the issuance of regulations shall take effect on the date on which final implementing regulations are prescribed in accordance with section 601.

(2) EXCEPTIONS.—The amendments made by sections 101, 102, 111, 112, 114, 115, 122, 133, 134, 135, 136, 138, 141, 142, 143, 161, 162, and 211 shall take effect on the date of enactment of this Act.

SUMMARY OF THE BUSINESS DEVELOPMENT OPPORTUNITY ACT OF 1994

The "Business Development Opportunity Act of 1994", being sponsored by Senator John Kerry of Massachusetts, is aimed at fostering the growth of small businesses owned and controlled by socially and economically disadvantaged individuals, commonly referred to as small disadvantaged businesses (SDBs).

The bill would—

establish a Minority Enterprise Development (MED) Program, a new three-phase program to replace the Small Business Administration's (SBA's) existing Minority Small Business and Capital Ownership Development Program (commonly referred to as the 8(a) Program from that section of the Small Business Act which provides special contracting authority), implementing SBA's MED Program proposal of June 1994—

providing tailored business development assistance, for the complete range of firms

from new "start-ups" to on-going businesses, to improve substantially their prospects for long-term success after graduation;

providing coordinated business development assistance by applying the resources of all available SBA programs as well as those other Federal agencies and SBA's private sector resource partners;

reducing the costly paperwork burdens on Program Participants by eliminating "non-value added" oversight and monitoring;

eliminating the second-guessing of business decisions made by Program Participants and by contracting officers at Federal agencies offering contracting opportunities to Program Participants;

correcting provisions of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", which have led to implementation contrary to Congressional intent; and

implementing recommendations of the September 1992 Final Report of the Commission on Minority Business Development;

advance the attainment of the existing Government-wide goal for the participation of SDBs in Federal contracting opportunities as prime contractors as well as subcontractors and suppliers, by—

extending to the civilian agencies of the Federal Government the procurement tools available to DOD since 1988 (under the Section 1207 Program, which was reauthorized in 1992 through September 30, 2000);

harnessing the intense competition for the award of major contracts to foster increased SDB subcontract participation by making the use of SDBs as subcontractors and suppliers a very important consideration in the solicitation and award process for prime contracts; and

improving access to information about subcontracting opportunities.

Some specific changes that the "Business Development Opportunity Act of 1994" would make to the SBA's MED Program, include:

PROGRAM ADMISSION

eliminating the duplicative regional review of applications to help expedite the chronically slow Program application process;

forcing full implementation of the statutory waiver enacted in 1990 to SBA's rule that a Program applicant must be in business for two years prior to making application (Two-Year Rule);

requiring that an applicant denied admission into the Program be furnished specific reasons and be given an opportunity to respond;

requiring SBA to develop an action plan to improve the geographic distribution of firms participating in the Program and the award of 8(a) contracts;

IMPROVED BUSINESS DEVELOPMENT ASSISTANCE

establishing a pilot Developmental Teaming Program to encourage Program graduates to enter into SBA-approved mentoring relationships with current Program Participants to furnish them practical business development training and to team with them as subcontractors on 8(a) contracts;

focusing the 7(j) Management Assistance Program on core business development skills, such as marketing and proposal development, and making it available exclusively to Program Participants;

IMPROVING ACCESS TO EQUITY FOR PROGRAM GRADUATES

encouraging SBA to use the waiver authority enacted in 1988 allowing a Program graduate to sell a non-controlling equity share of the firm without losing the right to continue performance of contracts won while in the Program;

providing a Program Participant a right to sell an equity interest in the firm so long as 51% ownership and control are maintained;

CONTRACT AWARD AND ELIGIBILITY MATTERS

accelerating the 8(a) contract award process by allowing the Federal agency offering a 8(a) contract opportunity to make award directly to the Program Participant (but requires SBA to assist a Program Participant requesting help during contract negotiations or contract performance);

eliminating the requirement to obtain advance approval from SBA regarding SIC codes used by a Program Participant;

prohibiting a Program Participant's forecast of its anticipated 8(a) contract awards (contract support level) from being used as a bar to the award of an 8(a) contract won competitively or through self-marketing;

strengthening business-mix provisions of P.L. 100–656 to encourage Program Participants to steadily diminish their dependence on 8(a) contracts as the firms approach Program graduation;

correcting a provision of P.L. 100-656 which did not permit a Program Participant to count competitively won 8(a) contracts towards attaining its competitive business-mix requirements;

authorizing a Program Participant to "bundle" the capabilities of a team of subcontractors so as to more effectively compete for the large, complex, and diverse "bundled" contract opportunities that are becoming more common, by allowing SBA to waive certain limitations, including level of subcontracting;

CONTRACT ADMINISTRATION IMPROVEMENTS

requiring expedited Government payment of invoices and progress payment requests under 8(a) contracts;

requiring expedited Government responses to questions arising during the performance of 8(a) contracts;

making available Alternative Disputes Resolution (ADR) techniques for disputes and claims arising under 8(a) contracts; and

REDUCING REPORTING AND PAPERWORK BURDENS

reducing reporting burdens on Program Participants.

Other provisions of the "Business Development Opportunity Act of 1994" are aimed at—

MAINTAINING PROGRAM INTEGRITY

deterring "front" companies from self-certifying as SDBs by improving SBA's administration of the Government-wide "status" protest system and encouraging the use of available administrative as well as criminal remedies for those individuals or firms found to be engaged in a pattern of misrepresentation;

INCREASING THE FEDERAL CONTRACT PARTICIPATION OF SMALL BUSINESSES GENERALLY

making the evaluation of subcontract participation in the awarding of major prime contracts, apply to subcontracting with all small business concerns; and

increasing the Government-wide goal for participation of small business concerns generally in Federal contracting, from 20% to 25%.

SECTION-BY-SECTION ANALYSIS OF THE BUSINESS DEVELOPMENT OPPORTUNITY ACT OF 1994

Sec. 1. Short Title.

This section establishes the bill's citation as the "Business Development Opportunity Act of 1994".

Sec. 2. Table of Contents.

This section sets forth the headings of the bill's various sections in the form of a Table of Contents.

TITLE I—AMENDMENTS TO THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Part A—Program Organization and Participation Standards

Sec. 101. Modification of Program Title.

This section would change the name of the program from the Minority Small Business and Capital Ownership Development (MSB/COD) Program to the new title of the "Minority Enterprise Development" (MED) Program, as recommended by the Small Business Administration. In adopting a new program title that more aptly and succinctly describes the Program's actual objectives, it is expected to facilitate the renewed effort to successfully implement a coordinated business development program and to encourage the common use of a term other than the "8(a) Program", which suffers from almost universally negative perceptions within the general public emphasizing the unregulated use of non-competitive or "sole-source" contracting and other abuses. Adoption of the new program name, the MED Program, is designed to send a clear message that this legislation, as well as SBA's "reinvention" initiatives, are determined to reshape the program into one that will provide effective business development assistance to Program Participants, which will provide a firm foundation for long-term business success after Program graduation, enhancing their prospects for success at least to the level of small business concerns that are owned and controlled by individuals who are other than socially and economically disadvantaged individuals.

Sec. 102. Consolidation of Eligibility Review Function.

This section would eliminate the review of Program applications at the regional level, one of the three levels of review through which a Program application must presently pass. GAO has found that the eligibility review conducted at the Regional Office level is essentially repeated when the application reaches the SBA Central Office. Under the provisions of the amendment, the substantive evaluation of Program applications would be made only once at a single centralization location either located at (or reporting to) the SBA Central Office by personnel focused on Program applications. The amendment would leave unchanged: (a) convenient access to advice concerning the Program, including the application process at the local SBA District Office; and (b) the District Office's responsibility to initially review a Program application for completeness and suitability for eligibility review within 15 days of submission.

Sec. 103. Clarification of Various Eligibility Criteria.

Subsection (a) eliminates the paperwork burdens associated with an Indian Tribe having to furnish data to prove its status as "economically disadvantaged" so that a tribally-owned business may be admitted to the Program. No business concern of a tribal Government has been declined admission to the Program for failure to be economically disadvantaged. This recommendation was included among the legislative recommendations contained in SBA's FY 1992 report to the Congress on MSB/COD Program.

Subsection (b) makes a series of necessary conforming amendments.

Sec. 104. Clarification of Certain Additional Eligibility Criteria Imposed by Regulation.

This section makes a series of amendments to the Small Business Act to address several limitations on Program eligibility imposed by SBA exclusively through regulations.

First, SBA regulations currently require that a prospective Program Participant must be in business for two years in order to be eligible to make a Program application. Section 203 of Public Law 101–574, the "Small Business Administration Reauthorization and Amendments Act of 1990", specified criteria for the waiver of the so-called "Two-Year Rule". This rule essentially excluded the participation of "start-up" firms, despite the ability of the new firm to demonstrate substantial likelihood of future success based upon the firm having (or being able to obtain) necessary financial and other resources as well as the management and technical capabilities of its owners and key employees derived from substantial experience working for others. Although over three years have passed since the effective date of the statute, no action has been taken to incorporate the statutorily required waiver into the Program's published regulations. Without modifications to published regulations, prospective Program Participants continue to believe a rigid Two-Year Rule still applies. This section incorporates the waiver standards into the Small Business Act.

Second, SBA regulations require that the socially and economically disadvantaged individual upon whom eligibility is based must be working full-time at managing the firm seeking Program admission. This requirement is another obstacle to the admission of a "start-up" firm. Some prospective Program Participants retain employment with another concern to maintain a steady family income while awaiting access to the Program's various forms of developmental assistance.

Third, SBA regulations require a tribally-owned corporation to employ a Native American as chief executive officer (CEO) to manage the firm's day-to-day operations in order to obtain (and maintain) Program eligibility. Many tribal governments have experienced difficulty in identifying Native American CEOs. Under current regulations, a tribally-owned corporation's continued eligibility is jeopardized if the tribal government is unable to maintain a Native American CEO. This provision would permit the tribal government to use someone other than a Native American CEO, if it certifies to SBA that it is unable to hire a qualified Native American CEO after conducting a national recruitment.

Fourth, under current regulations, SBA may deny admission to the Program on the basis of a general finding that the prospective Program Participant lacks "a likelihood of future success". This section would require SBA to provide specific findings if an applicant firm is denied admission on this basis. A subsequent conforming amendment of the bill would repeal the statutory provision that SBA identifies as the statutory basis for this wholly subjective criteria for Program admission.

Finally, the provision maintains the current limitation on SBA's ability to deny admission to a prospective Program Participant if the type of goods or services being offered by the firm are not purchased in sufficient quantities by the Federal Government. The existing statutory limitation was based on an amendment offered by Senator John Kerry to the legislation which became Public Law 100–656, the "Business Opportunity Development Reform Act of 1988".

Sec. 105. Enhancing Due Process in Eligibility Determinations.

This section would require SBA to support a denial of an application for Program admission with specific determinations supported by specific findings and to provide an opportunity for a Program applicant to respond (or to make appropriate modifications to its application or business organization to address valid concerns). It would also require that if SBA declined the application on reconsideration, it would have to give the applicant an opportunity to respond to any grounds not previously raised by SBA. Currently under SBA's Program regulations, an applicant is entitled to only one reconsideration. After being declined on reconsideration, the regulations require the prospective Program Participant to wait a year before again being eligible to submit a Program application. SBA's internal SOPs (Standard Operating Procedures), however, do not preclude basing an adverse decision on reconsideration on matters not previously raised, effectively denying the applicant any opportunity to respond (or take corrective action).

Sec. 106. Improving Geographic Distribution of Program Participants.

This section would require SBA to develop an action plan for improving participation in the MED Program by firms across the Nation. The section specifies that the required action plan would have to address two persistent concerns about the existing MSB/COD Program the concentration of Program Participants and contracts awarded under the authority of section 8(a) in certain geographic areas. First, the action plan would have to specify an outreach program focused on reaching eligible small business concerns in States with historically low rates of Program participation. Second, the action plan would have to make recommendations for improved implementation of section 8(a)(16)(B) of the Small Business Act, added in 1988 by P.L. 100–656. This current provision of the Small Business Act express the Congressional objective of improving the equitable distribution of 8(a) contracts awarded on a noncompetitive basis.

It is recognized that effecting such equitable distribution of contracts is made more complicated by three factors. First, the geographic concentration of Program Participants in certain States or regions. Second, the natural tendency of more developed and aggressive Program Participants to locate within cities or regions in which their Federal customers' principal buying activities are centralized. And third, the emphasis on self-marketing by Program Participants as a skill development objective, which was an objective of the 1988 legislation, is re-emphasized buy other provisions of this bill, and is increasingly becoming the almost exclusive method by which new Federal contracting opportunities are identified for award pursuant to section 8(a). Nevertheless, more aggressive implementation of section 8(a)(12 of the small business and better use of agency procurement forecasts required by provision of existing law may be fruitful areas for consideration by SBA in formulating its action plan. Similarly, the implementation of electronic contracting and mandate use of commercial products mandated by the "Federal Acquisition Streamlining Act of 1994" should also be considered in formulating the action plan.

Part B—Business Development Assistance

Sec. 111. Developmental Assistance Authorized for Program Participants.

This section would make all Program Participants eligible for the full range of developmental assistance authorized under the Program. Under amendments made by Public Law 100–656, some forms of developmental assistance are not available to firms in the so-called Transitional Stage of Program participation, i.e., the last five years of the nine-year Program participation term. More than four years of experience under the 1988 reform legislation has demonstrated that such a limitation only denied Program Participants to beneficial business development assistance without substantially advancing the Congressional objective of encouraging the Program Participant's preparation for graduation.

Sec. 112. Expanding the Eligible Uses for Loans Under Existing Loan Program for Program Participants.

This section would expand the eligible uses for the proceeds of loans currently authorized for Program participants. Under the proposed amendment loan proceeds could be used for working capital by Program Participants providing services. Currently, the loan program is targeted to Program Participants in manufacturing with the focus on the capitalization of facilities or production equipment. This recommendation was included among the legislative recommendations contained in SBA's FY 1992 report to the Congress on MSB/COD Program.

The statutory authority for loans to Program Participants adopted as Section 302 of P.L. 100–656 (which added a new Section 7(a)(20) to the Small Business Act (15 U.S.C. 636(a)(20)) is sufficiently flexible to permit the SBA to implement two elements of its proposed MED Program aimed at expanding access to capital for Program Participants. First, the statute would permit loans to be made at the higher guarantee rates being contemplated for Program participants, since the only statutory limitation is that guarantee rate cannot be less than 85%. Second, the authorizing statute would impose no obstacle regarding the SBA's proposal regarding the pre-authorization of a Program Participant for a loan. Such a pre-authorization process holds great promise as a means to substantially expedite the current process by which a Program Participant seeks to obtain a loan from a participating bank.

Sec. 113. Test Program for the Use of Surety Bond Waivers.

This section would extend until September 30, 1997, the test program for the use of surety bond waivers authorized by Section 7(j)(13)(D) of the Small Business Act, which was authorized in Public Law 100–656, the "Business Opportunity Development Reform Act of 1988" and subsequently extended through October 1, 1994 by Section 206 of Public Law 101–574, the "Small Business Administration Reauthorization and Amendments Act of 1990". It would also amend Section 7(j)(13)(D) to facilitate future implementation of the surety bond waiver authority by the various procuring agencies and by SBA.

Sec. 114. Targeting Section 7(j) Management Assistance to Program Participants.

This section would target the management assistance program authorized by Section 7(j)(1) of the Small Business Act to Program Participants. Such targeting is likely to substantially increase the impact of the limited resources allocated to the 7(j) Management Assistance Program, slightly more than $8 million for FY 1994.

The management assistance needs of other small business concerns owned and controlled by socially and economically disadvantaged individuals, who are currently eligible for 7(j) management assistance, would be met through increased emphasis on

the needs of such firms by the national network of Small Business Development Centers (SBDCs) supported by SBA and by improved coordination with the national network of Minority Business Development Centers operated by the Minority Business Development Administration (MBDA) at the Department of Commerce.

Sec. 115. Other Enhancements to Section 7(j) Management Assistance Program.

This section would further amend the Section 7(j) Management Assistance Program to authorize funds appropriated to the program to remain available for obligation during the year in which they are appropriated and during the succeeding fiscal year. This amendment fulfills a suggestion previously made by the SBA in October, 1993.

This subsection would also accord a preference in the award of financial assistance pursuant to the Section 7(j) Management Assistance Program to certain university-sponsored programs for the training of minority entrepreneurs, such as the resident course at the Amos Tuck School of Business at Dartmouth University. SBA's proposed MED Program contains a similar element regarding executive development among its proposals for enhanced Managerial Training and Assistance for Program Participants.

Sec. 116. Developmental Teaming.

This section would establish a pilot Developmental Teaming Program with the SBA's Minority Enterprise Development (MED) Program. The purpose of the Developmental Teaming Program is to encourage the formation of mentoring relationships, contract teaming arrangements and strategic business alliances between current MED Program Participants and more developed minority business enterprises, principally graduates of the MED Program (and its predecessor program, the Minority Small Business and Capital Ownership Development (MSB/COD) Program).

Subsection (c) established the basic qualifications for a firm to be an assistance recipient or an assistance provider under the Developmental Teaming Program. Assistance providers, to be called "Developmental Teaming Partners" may either be graduates of the MED Program (or the MSB/COD Program) or current Program Participants nearing graduation who are found by SBA to be unusually well-developed and fully capable of providing business development assistance.

Subsection (d) recites the array of developmental assistance that may be furnished under the Developmental Teaming Program. The provision provides ample flexibility for the parties to a proposed Developmental Teaming Agreement to tailor a program to their unique and mutual needs, since it specifically authorizes "such other forms of assistance * * * contained in a developmental teaming agreement".

Subsection (d) also makes explicit that each Developmental Teaming Agreement must receive prior approval by SBA, before being implemented by the parties. It is intended that SBA shall require specification of the developmental assistance to be furnished in sufficient detail to permit monitoring, while being mindful of the flexibility that must be available in a bilateral business development mentoring relationship. Similarly, it is intended that SBA exercise approval regarding the percentage of a contract performance undertaken by each of the parties under a specific contract awarded to the Program Participant pursuant any program that accords a preferential status to the Program Participant as a small business concern owned and controlled by socially and economically disadvantaged individuals.

Subsection (e) specifies the minimum elements of a Developmental Teaming Agreement, including its duration. An agreement may have an initial term of three years, with an option for an additional two years. Such a potential for a five-year Developmental Teaming relationship mirrors the five-year duration (one base year and four one-year option years) that has become prevalent in Federal contracting (and was given explicit statutory recognition in the "Federal Acquisition Streamlining Act of 1994").

Subsection (f) provides an incentive to the Developmental Teaming Partner to enter into a developmental mentoring relationship and furnish assistance by permitting the award of subcontracts under 8(a) contracts by the Program Participant to its Developmental Teaming Partner in amounts that would otherwise be prohibited by section 8(a)(14) of the Small Business Act (which requires performance of 50% of the work by the prime contractor).

Subsection (g) provides protection for the participants of an approved Developmental Teaming Agreement from a finding by the SBA that the parties to the agreement are affiliates or that one party is controlling (either directly or indirectly) the business activities of the other. Activities outside the scope of the approved agreement are not shielded by this provision.

Subsection (h) specifies procedures for termination of Program participation by firms receiving assistance under the Program and those providing assistance. The provisions are designed to assure "due process" protections to recipients of Developmental Teaming assistance. The provision also specifies the procedures relating to SBA powers to terminate Development Teaming Agreements (as well as the appeal rights accorded to the private sector parties).

Subsection (i) specifies the duration of the pilot program. Developmental Teaming Agreements approved by SBA from the effective date of the Program's implementing regulations through September 30, 1997. Performance of approved Developmental Teaming Agreements may continue through the Program's termination date, September 30, 2002.

Subsection (j) specifies a timetable for the issuance of proposed and final regulations for the implementation of the Program.

Subsection (k) contains definitions of terms by cross-references to existing definitions in the Small Business Act.

Part C—Improving Access to Equity for Program Graduates

Sec. 121. Continued Contract Performance.

This section seeks to encourage the SBA to make use of the statutory waiver authority related to the performance of a contract awarded pursuant to section 8(a) when the socially and economically disadvantaged owners of the firm awarded the contract relinquish ownership or control of the firm. Under current law, an 8(a) contract would have to be terminated, if the socially and economically disadvantaged individuals upon whom Program eligibility were established relinquished (or entered into an agreement to relinquish) ownership or concern that was awarded the 8(a) contract, unless a waiver was granted by the SBA Administrator. While the statute specifies a broad array of circumstances under which such a waiver can be granted, the waiver authority was restricted to the SBA Administrator, "on a nondelegable basis". Experience has indicated that this nondelegability has unexpectedly resulted in making the waiver authority unavailable in practical terms. The proposed amendment would permit the delegation of the waiver authority. It is expected that this legislative change, when coupled with the less control-oriented management style under SBA's new MED Program, should strike the balance sought by the 1988 legislation. "Selling" of 8(a) contracts will be deterred, while not placing unreasonable burdens on the transfer of ownership or control under legitimate circumstances.

Sec. 122. Continued Program Participation.

This section amends Section 7(j)(11)(D) of the Small Business Act to clarify the right of a Program Participant to transfer a noncontrolling ownership interest in the firm to another small business concern owned and controlled by socially and economically disadvantaged individuals. The proposed amendment would revoke an existing regulatory prohibition on the transfer of more than a 10 percent ownership interest to a small business concern owned and controlled by socially and economically disadvantaged individuals if that firm is a graduate of the MSB/COD Program. We should be encouraging rather than discouraging capital investment in less developed Program Participants by Program graduates.

Part D—Contract Award and Eligibility Matters

Sec. 131. Contract Award Procedures.

This section would permit the direct award of contracts under the authority of Section 8(a) by the agency having the contracting opportunity. Currently, Section 8(a) contains the legal fiction that the contracting agency awards a prime contract to SBA, which then subcontracts to a Program Participant. This provision adopts a recommendation contained in the Final Report of the Commission on Minority Business Development, established by Section 505 of the "Business Opportunity Development Reform Act of 1988", P.L. 100-656. A similar recommendation was included in the September 1993 Report of the Vice President's National Performance Review, and has been endorsed by the Administration as part of its comments on S. 1587, the "Federal Acquisition Streamling Act of 1994".

The amendment would permit a Program Participant to request the SBA's assistance with respect to the contract negotiations with the agency making the contract award and with respect to the resolution of contract administration matters arising during performance of the 8(a) contract. The amendment also retains SBA's current authority to appeal a broad array of "adverse decisions" relating to making a contracting opportunity available for award pursuant to Section 8(a) and the award of a contract to a Program Participant.

Sec. 132. Timely Determination of Award Eligibility for Contract Award.

This section would require the SBA to promptly inform a contracting activity regarding the eligibility of a Program Participant for award of a contract under section 8(a). Similarly, it would require SBA to establish the eligibility for award of competing Program Participants at the closing date for receipt of offers. Currently, the conduct 8(a) competitions are being impeded by ineligibility determinations being made at the close of the competitive process with regard to the Program Participant selected for award by the contracting agency.

Section 131 makes explicit that the procuring agency is responsible for determining whether the Program Participant is capable of performing the contract (a "responsibility determination" in the jargon of Federal procurement). A determination of "non-responsibility" by the agency's contracting officer

is subject to an independent review of the firms capabilities to perform the contract by the SBA under the Certificate of Competency Program, in the same manner as a "non-responsibility" determination regarding finding regarding any small business concern. In addition to a responsibility determination made by the agency contracting officer, this section recites the existing statutory criteria under which a Program Participant can be found to be ineligible for award by SBA.

Sec. 133. Competition Requirements.

Subsection (a) establishes the standard for determining whether various forms of requirements-type contractors (often referred to as ID/IQ (indefinite delivery/indefinite quantity) contracts to be awarded pursuant to section 8(a) should be awarded as a result of a competition among eligible Program Participants or on a sole-source basis. Current law requires a competition among Program Participants if the anticipated value of the contract (including options) is expected to exceed $5 million in the case of a contract requiring manufacturing and $3 million in the case of a contract to furnish any other product or service (including construction).

Under existing SBA MSB/COD Program regulations, the decision on whether the contracting opportunity should be subject to competition is to be based upon the dollar value of task orders or delivery orders guaranteed under the contract. Such "guaranteed minimums" commonly reflect but a very small percentage of the aggregate value of all task order or delivery orders actually placed under an ID/IQ contract. This regulatory exception to competition has apparently resulted in a large number of 8(a) contracting opportunities to be offered as ID/IQ contracts, with guaranteed minimums below the threshold for competition, irrespective of the estimated total value of the contract (in terms of both requested and approved levels of authorization and appropriation).

Audits of ID/IQ contracting in support of the MSB/COD Program have reached the conclusion that the SBA Program regulations and the widespread use of ID/IQ contracts with low guaranteed minimums have largely frustrated the Congressional objective of having larger dollar value contracts awarded after competitions among Program Participants. In a particularly critical audit report (DOD IG Audit Report No. 93024) issued in November, 1992, the DOD Inspector General recommended to SBA that its Program regulations be modified to make explicit that the threshold for competition on ID/IQ contracts be determined on the basis of the estimated total value of the contract. The DOD IG notes that this is the standard used in the Government-wide Federal Acquisition Regulation (FAR) to find a broad array of regulatory requirements applicable to ID/IQ contracts. Although agreeing to change its Program regulations, SBA has yet to propose a modification after nearly 18-months.

The same DOD IG audit report also found that Program Participants under non-competitively awarded ID/IQ contracts relating to computer services and equipment were essentially acting as brokers, merely furnishing computer equipment to the DOD buying activity on a sole-source basis through an 8(a) contract award. By having the equipment purchases made under an 8(a) contract, the DOD buying activities were able to use the 8(a) contract to avoid the justifications and approvals that would otherwise be statutorily required for such a sole source purchase.

Subsection (b) would permit the Associate Administrator for the MSB/COD Program, on a nondelegable basis, to authorize non-competitive 8(a) contract awards in excess of the thresholds for competition under limited circumstances. Essentially, up to $15 million in non-competitive awards could be authorized for a Program Participant in the Developmental Stage (first five years) of its nine-year Program Participation Term and if the firm has not exceeded 25 percent of the size standard for its principal line of business as reflected in its most recent business plan.

Sec. 134. Policies Regarding SIC Codes.

This section would modify the processes by which Standard Industrial Classification (SIC) Codes are utilized by a Program Participant in describing the firm's business activities and by an agency contracting officer in describing the item or service being procured under a specific contract solicitation.

The system of SIC Codes, maintained by the Office of Management and Budget, provides broad descriptions of classes of business activity in manufacturing and services, which are intended to permit various agencies of Government to capture consistent data for economic and other purposes. The SBA assigns a numerical size standard (number of employees or average gross receipts over a three year period) to each of these SIC Codes, which is the principal method for determining whether a business concern is to be recognized as a "small business". Program Participants use these SIC codes to describe the types of business activity in which the firm is engaged (and in which it intends to become engaged if its business plan is successfully implemented). With respect to Government contracting, an agency contracting officer assigns an SIC code to describe the principal product or service being sought by the Government through a contract solicitation. Because of the linkage to the SBA size standards, the contracting officer's designation of the appropriate SIC Code to describe the contracting opportunity can be determinative of whether a particular firm will be recognized as a "small business concern" and be permitted to participate, if the competition is to be restricted to small businesses, or to be awarded pursuant to section 8(a) (as well as other statutorily authorized preferential procurement techniques for small business concerns owned and controlled by socially and economically disadvantaged individuals).

Subsection (a) would make explicit the right of a Program Participant to designate the SIC codes applicable to the firm's current and planned business activities as reflected in its business plan (or any modifications to such plan), without obtaining specific prior-approval from the SBA, which is currently required by Program regulations. Program Participants complain that delays attendant to such prior-approval requirements have impeded the ability of some firms to be considered eligible for award of an 8(a) contract, even though the contracting officer was prepared to determine that the firm was capable of performing the contract. At the same time, given the preferential nature of the 8(a) contracting process, it is not wholly uncommon for a Program Participant to declare its capability to furnish particular types of products or services after a specific contracting opportunity has been made available. The provision contemplates the issuance of revised Program regulations that would accord substantially more freedom for a Program Participant to chart its own business destiny, but still require an orderly process of adopting SIC codes that is linked to the firm's announced vision of its intended patterns of growth and development as reflected in its business plan.

Subsection (b) would make explicit the right of a contracting officer to assign an SIC Code to a contracting opportunity to be awarded pursuant to section 8(a) in the same manner such officer assigns an SIC code to other contracting opportunities. Current Program regulations reserve to SBA final approval of the SIC code of a contracting opportunity to be awarded under section 8(a), apparently as an additional check upon the potential for abuse. The proposed change is in keeping with the overall theme of the bill in placing principal responsibility for the award of contracts pursuant to section 8(a) in the hands of the contracting agencies.

It should be noted, however, that subsection (a) is not intended to impair SBA's existing authority to protest, under existing regulations, the appropriateness of the SIC code assigned by a contracting officer to a specific contracting opportunity. This authority, if vigorously used by the SBA when circumstances appear to warrant, should provide adequate opportunity to check the real potential for abuse in the assignment of SIC codes.

Subsection (c) would make explicit the right of a contracting officer to make the determination that a prospective contractor is capable of performing the proposed contract (a determination of "responsibility" in the jargon of Government contracting) to be awarded pursuant to section 8(a) in the same manner such officer assigns an SIC code to other contracting opportunities. Current Program regulations reserve to SBA the right to make the final determination of responsibility regarding the award of a contract pursuant to section 8(a), apparently as an additional protection for Program Participants. The proposed change is in keeping with the bill's theme of placing principal responsibility for the award of contract pursuant to section 8(a) in the hands of the contracting agencies.

It should be noted, however, that subsection (c) does not impair the protections accorded through the SBA Certificate of Competency (COC) Program under the authority of Section 8(b)(7) of the Small Business Act. If a contracting officer makes a "nonresponsibility" determination regarding a Program Participant with respect to a potential 8(a) contract award, the Program Participant is entitled to an independent review by SBA of the contracting officer's nonresponsibility determination under the COC Program in the same manner as any small business.

Sec. 135. Use of Contract Support Levels.

This section would prohibit SBA from determining a Program Participant to be ineligible for the award of pursuant to section 8(a) because the award would cause the firm to exceed its so-called 8(a) contract support level.

Under the 1988 amendments to the MSB/COD Program, a Program Participant is required to forecast the volume of business activity the firm will be seeking through 8(a) contract awards (competitive as well as noncompetitive) as part of the firm's annual business planning process. It was intended that such forecasts would provide the SBA with an additional tool with which to urge the various procuring agencies to make available additional contracting opportunities for award pursuant to section 8(a). In implementing this statutory provision, SBA made the 8(a) contract support level forecasted by each Program Participant into a ceiling on the dollar volume of 8(a) contract awards the firm would be permitted to receive.

This restrictive interpretation of the statutory provision has led to several adverse consequences. First, some Program Participants have been denied award of 8(a) contracts, even if the contract was to be awarded as the result of the firm's having won an 8(a) contract competition. Second, recognizing the 8(a) contract support level forecast was being implemented as a "ceiling" rather than a "floor", Program Participants began to offer unrealistically inflated forecasts to avoid even the possibility of losing a future 8(a) contract award. This has diminished the utility of the forecasts to be an effective marketing tool for the SBA in its dealings with the various procuring agencies.

Sec. 136. Business Mix Requirements.

This section would amend section 7(j)(10) of the Small Business Act to permit contracts awarded as a result of competitions among Program Participants to be counted as competitive for the purpose of attaining the firm's "business mix" goals.

The "Business Opportunity Development Reform Act of 1988" established "business mix" targets aimed at gradually reducing the dependence of Program Participants on the award of contracting opportunities awarded pursuant to Section 8(a), especially those awarded on a non-competitive basis. Gradually reducing the firm's dependence on 8(a) contract awards during the nine years of its Program participation term would substantially increase the prospect for success after graduation.

Experience with the Act since 1988 strongly suggested that 8(a) contract awards won as the result of an 8(a) contract competition should have been creditable as "competitive" in attaining the firm's business mix targets. With competitive 8(a) awards unavailable for meeting a Program Participants "business mix" targets, firms in the later stages of their Program Participant term were being deterred from competing for 8(a) awards, since they lacked sufficient dollar volume of other competitive awards which were creditable to the attainment of the "business mix" targets.

The amendment would again make consistent the Congressional intent to distinguish between competitive and non-competitive awards, and to encourage Program Participants to participate in increasingly less restrictive forms of contract competition, so as to prepare them most effectively for "full and open competition" for government contracts and the unrestricted competitions of the commercial marketplace.

Sec. 137. Encouraging Self-Marketing.

Subsection (a) of this section would direct the SBA to modify its regulations for the MSB/COD Program to eliminate the restrictions on "self-marketing" to the various agency buying activities by Program Participants through its restrictions on so-called "National Buys" and "Local Buys".

Under Program regulations a "Local Buy" is a product or service purchased to meet the specific needs of one user on one location. A "National Buy" is a product or service purchased by a centralized procuring activity to support the needs of one or more users at two of more locations.

Subsection (b) repeals the requirement that construction contracts be awarded to firms in the county or state in which the work is to be performed.

Inadvertently left unaddressed in 1988, this provision conflicts with both the intent of the Public Law 100-656 and the practical business realities of the modern construction market. First, Public Law 100-656 sought to ease the myth that Program Participants could expect to be "given" contracts by SBA. It sought to erase that myth by making explicit the responsibility of Program Participants to engage in self-marketing. The provision to be repealed places an entirely artificial impediment on self-marketing that is also contrary to the business realities of modern construction contracting. Prospectively successful small construction firms must be able to develop the capabilities to undertake projects outside of their immediate geographic location.

Further, the implementation of this provision often prevents Program Participants from self-marketing in their natural markets simply because those markets happened to be located across a state line. For example, a firm in southern New Jersey being able to self-market work in the Philadelphia area. Or conversely, a Program Participant in southeastern Pennsylvania can currently be prohibited from self-market business opportunities in southern New Jersey, simply because of a state boundary that does not constitute an unsurmountable obstacle to business activities outside the Program. Further, reports from Program Participants strongly suggested that the statutory provision was not being uniformly applied by various SBA regional and district offices, or in some instances within the same district or regional office.

Sec. 138. Building of Contractor Capabilities.

Subsection (a) of this section would permit a Program Participant to assemble a subcontract team capable of competing for a so-called "bundled" contract opportunity by authorizing the waiver of existing requirements relating to permissible amounts of subcontracting and the inclusion of other than small business concerns. Such authority is seen as a more flexible alternative to the formation of joint ventures.

Currently, a Program Participant may propose for SBA approval a joint venture, provided that the Program Participant holds a 51% interest in the joint venture and exercises control of the joint venture's day-to-day business operations. Since a joint venture is a separate legal entity, both the Program Participant and its joint venture partners must incur legal costs relating to defining the proposed joint venture, so that they may be reviewed and approved by SBA. And subsequently, incur additional costs relating to the actual formation of the approved joint venture for the purpose of competing for one or more contracting opportunities. Success in winning such contracts, while enhanced by the combined capabilities of the joint venture partners, is not guaranteed.

By facilitating the formation of more tailored and targeted prime contractor-subcontractor teams, the proposed new authority will provide the same opportunity to pool resources, while the unnecessary cost of creating a new legal entity. As with the information of a joint venture, the proposed prime contractor-subcontractor team would be subject to approval by SBA, if the Program Participant prime contractor was anticipated to be performing less than 50% of the work (as is currently required by statute if the completing is restricted) or the proposed subcontracting with a large firm would otherwise result in a finding of affiliation with, or control by, the large firm subcontractor. Under the proposed provision a large firm (technically, a firm that is "other than a small business concern") would be permitted to be a major subcontractor (up to 25% of the total value of the contract).

Subsection (b) provides a definition of "contract bundling".

Subsection (c) makes a necessary conforming amendment to the Small Business Act which inserts a cross-reference to the new definition.

Part D—Tribally-Owned Corporations

Sec. 141. Management and Control of Business Operations.

This section would permit the day-to-day business operations of a tribally-owned corporation to be managed by other than a Native American with the necessary skills and experience to serve as the tribal corporation's chief executive officer (CEO). The use of such a non-Native American CEO would be subject to approval by SBA.

Under current law, the CEO of a tribal corporation must be a Native American if the tribal corporation is to be eligible for Program admission or to maintain Program eligibility. Some tribal corporations have had their continued Program eligibility jeopardized when their current Native American CEO chose to depart and they were unable to identify a qualified replacement, even after a national recruitment. While steadily increasing in number, due to opportunities offered by the growing number of tribal corporations, the cadre of Native Americans CEOs remains relatively small. This provision would avoid penalizing legitimate tribal corporations, with their potential to bring desperately needed employment to reservations, from participating in the Program simply because they were unable to identify a qualified Native American CEO.

Since this provision would permit the day-to-day business management of the tribal corporation to be exercised by other than a socially disadvantaged individual, it is expected that SBA's implementing regulations would require the tribal government to demonstrate that it had conducted a national recruitment to locate a qualified Native American CEO before approving the use of a non-Native American CEO. Similarly, it is expected that the tribal government would conduct such a national recruitment to identify a Native American CEO each time a vacancy arises.

Sec. 142. Joint Venture Authority.

Subsection (a) of this Section codifies and makes permanent the current authority for tribal corporation Program Participants to enter into joint ventures under certain specified circumstances. This joint venture authority was initially granted on a three-year pilot basis by Section 602(b) of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988". The joint venture authority was extended for an additional three years (through September 30, 1994) and expanded to apply concurrently to five contracts rather than two by Section 205 of Public Law 101-574, the "Small Business Administration Reauthorization and Amendments Act of 1990".

Experience during the pilot phase suggests that the authority has worked as intended. These joint venture relationships have permitted the tribal corporations to undertake larger contracts, bring more employment opportunities to the reservations, and have provided informal opportunities for developmental mentoring between the tribal corporation and its large joint venture partner.

Subsection (b) would move to Section 3 of the Small Business Act definitions of "Indian tribe" and "Native Hawaiian organization", which are currently found in Section 8 of the Act. The definitions are being transferred without substantive change.

Sec. 143. Rule of Construction Regarding the "Buy Indian Act"

This section establishes a statutory rule of construction that seeks to avoid any conflict

between the eligibility requirements for award of a contract pursuant to Section 8(a) of the Small Business Act and for award of a contract pursuant to the so-called "Buy Indian Act".

Part F—Contract Administration Matters

Sec. 151. Accelerated Payment.

This section would require that any contract awarded pursuant to Section 8(a) to a Program Participant in the Development Stage (first four years of its nine-year Program Participation Term) must provide for payment within 20 days for any proper payment request for work performed. Since cash flow is the life blood of any business concern, accelerating cash flow for such smaller, new entrants to the Program represents an exceedingly valuable form of developmental assistance.

Essentially, the provision is directing the inclusion in 8(a) contracts of a specific payment term in the same manner that the Prompt Payment Act (Chapter 39 of title 31, United States Code) specifies accelerated payment terms for enumerated classes of products or services. Other than specifying a payment term to be inserted in certain contracts awarded pursuant to section 8(a), the provision does not alter the requirements imposed on contractors or the protections accorded to the Government (and contractors) by the Prompt Payment Act.

Sec. 152. Expedited Resolution of Contract Administration Matters.

Subsection (a) of this section would amend the Small Business Act to require a contracting officer to provide a substantive response in writing to an inquiry from a Program Participant awarded a contract pursuant to Section 8(a) within 15 days of receiving a written inquiry concerning a matter relating to the administration of the contract. If the contracting officer is unable to respond within the 15-day period, such officer shall provide a written response within such 15-day period specifying a date certain by which the Program Participant may expect a substantive response to its inquiry.

Subsection (b) of the Section set forth a rule of construction making explicit that the amendment to Section 8(a) of the Small Business Act shall not be considered to have created any new rights under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

Sec. 153. Availability of Alternative Disputes Resolution.

This section would amend Section 8(a) of the Small Business Act to require the contracting officer responsible for the administration of an 8(a) contract to make available alternative disputes resolution (ADR) processes authorized by Section 6(e) of the Contract Disputes Act of 1978 (41 U.S.C. 603(e)) upon the request of the Program Participant, unless certain conditions were met.

The contracting officer would not have to provide ADR procedures if the contracting officer determined that the use of ADR techniques was inappropriate to the contract dispute at issue. The contracting officer's determination would have to cite one or more of the statutorily enumerated conditions (5 U.S.C. 572(b)) making ADR inappropriate or some other specific reason directly related to the contract dispute at issue. The contracting officer would be required to support such a determination with specific findings.

ADR techniques have been demonstrated to expedite resolution of contract disputes and to be substantially less costly than disputes pursued before the boards of contract appeals or through the courts. Making available such accelerated and less costly disputes resolution techniques is another obvious means by which the Government can assist Program Participants.

Part G—Program Administration

Sec. 161. Simplification of Annual Report to Congress.

This section would amend Section 7(j)(16) of the Small Business Act relating to the content of the report pertaining to the MSB/COD Program which SBA is required to submit annually to the Congress. It would modify the reporting requirement regarding the dependency of Program Participants on contracts awarded pursuant to the authority of Section 8(a).

Sec. 162. Reduction in Reporting by Program Participants.

This section reduces from a semiannual basis to an annual basis the report which a Program Participant must submit to SBA relating to the firm's use of agents to obtain Federal contracts.

TITLE II—CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS

Part A—Civilian Agencies Program

Sec. 201. Procurement Procedures Authorized.

This section adds a new Section 8(c) to the Small Business Act extending to the civilian agencies the special procurement procedures currently available to the Department of Defense under its so-called Section 1207 Program (Section 1207 of Public Law 99–661, the "National Defense Authorization Act for Fiscal Year 1987"), which established a five percent goal for the participation of SDBs in Defense contracting opportunities. Subsequently, Section 502 of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988" established a Government-wide five percent goal for SDB participation in Federal contracting opportunities (as well as a 20 percent goal for the participation of all types of small businesses), but did not afford the civilian agencies the special procurement procedures to attain their SDB goals.

Section 801 of Public Law 102–484, the "National Defense Authorization Act for Fiscal Year 1994" extended the Section 1207 Program through September 30, 2000 and codified it as Section 2323 of Title 10, United States Code.

Sec. 202. Implementation Through the Federal Acquisition Regulation.

Subsection (a) of this section requires uniform implementation of the new statutory authority through the Government-wide Federal Acquisition Regulation (FAR). While the provision is not intended to impair the existing regulations for the DOD Section 1207 Program found in the DFARS (Defense Federal Acquisition Regulations Supplement) or any DFARS supplement issued by a Military Service or a Defense agency, DOD would not be precluded from using the FAR coverage and reducing its DFARS coverage only to matters not addressed in the FAR. Since the special procurement authorities relating to the contract participation of SDBs in contracting (and subcontracting) opportunities are intended to mirror DOD practices, it is likely that any need for special DFARS coverage would be relatively minimal.

Subsection (b) of this section describes specific matters that are to be included in the regulations.

Sec. 203. Sunset.

This section establishes a sunset for the civilian agency equivalent of DOD's Section 1207 Program. The termination date is the same as that established for the DOD Program in October 1992 by the FY 1993 DOD Authorization Act, September 30, 2000.

Part B—Eligibility Determinations Regarding Status

Sec. 211. Improved Status Protest System.

This section amends Section 7(j)(10)(J) of the Small Business Act for the purpose of revitalizing the SBA's system for hearing and deciding protests regarding whether a firm has improperly self-certified its status as a small business concern owned and controlled by socially and economically disadvantaged individuals.

Currently, the authority to receive and decide status protests is vested in the Division of Program Certification and Eligibility within SBA's Office of Minority Small Business and Capital Ownership Development, pursuant to Section 7(J)(11)(F)(vii) of the Small Business Act. Under the provisions implementing regulations, a finding that a business concern is not a small business concern meeting the standards of section 8(d) of the Small Business Act, that is, a small business concern owned and controlled by socially and economically disadvantaged individuals, only applies to the procurement under which the status protest has been lodged. Except for an obligation to inform the contracting officer that such an adverse status protest decision has been issued, the firm is permitted to self-certify its status as a disadvantaged small business concern on a subsequent contracting opportunity. Further, many questions were raised about the substantial delays in the issuance of status protest decisions by SBA. Finally, critics of the current status protest system urge that it is further weakened by SBA's unwillingness to initiate action (or to permit a procuring agency to initiate action) to impose any of the statutorily authorized administrative or judicial remedies for multiple false certifications of status by the same firm. Taken together, these weaknesses have tended to virtually eliminate confidence regarding the utility of the status protest system (or SBA's willingness to police the self-certification system) within both the contracting officer community as well as the contractor community.

Under the proposed amendments, protests regarding status are transferred to SBA's Office of Hearings and Appeals. Some additional personnel resources may be required by the Office of Hearings and Appeals to assure that decisions on status protests are promptly rendered. Such an effective protest forum is essential if the integrity of the self-certification process regarding SDB status under various preferential contracting programs across Government is to be restored.

Finally, the proposed amendments would make explicit that a Federal agency (as well as the SBA) is authorized (and even encouraged) to initiate appropriate proceedings to impose statutorily authorized administrative or judicial remedies with regard to a firm that has been found to have engaged in a pattern of misrepresentations regarding its status as a small business concern owned and controlled by socially and economically disadvantaged individuals.

Sec. 212. Conforming Amendment.

This section would repeal the existing provision of Section 7(j)(11)(F) of the Small Business Act which currently authorizes the Division of Program Certification and Eligibility within SBA's Office of Minority Small Business and Capital Ownership Development to hear and decide status protests.

TITLE III—EXPANDING SUBCONTRACTING OPPORTUNITIES

Sec. 301. Evaluating Subcontract Participation in Awarding Contracts.

This section amends Section 8(d) of the Small Business Act to provide for the consideration of goals for the proposed participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals as subcontractors and suppliers as part of the process of selecting among competing offerors for the award of a prime contract in excess of $500,000 ($1 million in the case of construction).

Under current law, an offeror having been selected for the award of a prime contract in excess of the applicable threshold is required to negotiate goals and submit a plan for the use of such small businesses as subcontractors and suppliers. Although actual award of the contract is theoretically contingent upon the negotiation of goals and a plan acceptable to the agency's contracting officer, practical experience strongly suggests that the Government's leverage to negotiate the most ambitious goals is substantially diminished by the fact that the prospective prime contractor has already been selected for contract award. By making small business subcontract participation an important factor in the award of the prime contract, it is possible to harness the contract competition, which is frequently quite intense, to substantially increase the amount of small business subcontract participation.

The amendment also includes other safeguards to assure that a prime contract actually makes use of those subcontractors which the firm has identified as subcontractors or suppliers under the prime contract.

Sec. 302. Subcontracting Goals for Certain Small Business Concerns.

This section amends Section 8(d)(7) of the Small Business Act to require that a small business concern owned and controlled by socially and economically disadvantaged individuals having been awarded a contract with an anticipated total value of $20 million or more through a competition that was restricted to such small disadvantaged businesses, shall be required to negotiate a goal and furnish a plan for the participation of so-called emerging disadvantaged small business concerns as subcontractors and suppliers. Section 502 of the bill defines an emerging small business concern as one which does not exceed 25 percent of the SBA's numerical size standard for a small business concern.

Sec. 303. Small Business Participation Goals.

This section amends Section 15(g) of the Small Business Act increasing the goal for the participation of small business concerns from 20 percent to 25 percent and from 5 percent to 8 percent for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals.

Under present law, an eight percent goals applies to the contracting activities of several civilian agencies, including NASA and EPA. Further the existing 5 percent goal for SDB participation by the Department of Defense was exceeded during FY 93, attaining [5.x percent], which the Government-wide SDB participation rate was [x.x percent], which substantially diminishes the efficacy of the current Government-wide 5 percent participation goal, which was adopted in 1988.

TITLE IV—REPEALERS AND TECHNICAL AMENDMENTS

Part A—Repealers

Sec. 401. Loan Program Superseded by Section 7(a) Loan Program.

This section repeals Section 7(i) of the Small Business Act which authorizes a guaranteed loan program that has been superseded by the Section 7(a) Guaranteed Loan Program.

Sec. 402. Superseded Loan Program Relating to Energy.

This section repeals Section 7(l) of the Small Business Act which authorizes a dormant loan program relating to stimulating business activities in the improved utilization of fossil fuels and advancing the use of non-fossil fuel energy sources. The objectives of this specialized loan program are now being met through the less restrictive, and funded, Section 7(a) Guaranteed Loan Program.

Sec. 403. Employee Training Program of Limited Scope.

This section repeals Section 15(j)(13)(E) of the Small Business Act which authorizes a program under which SBA may provide financial assistance for the training of employees (or perspective employees) of firms participating in the SBA Minority Small Business and Capital Ownership Program. This program has remained unfunded since it was authorized as part of P.L. 100–656. the "Business Opportunity Development Reform Act of 1988". Repeal of this provision is in keeping with the Administration's effort to rationalize and to a greater extent consolidate the worker training programs scattered through various Departments and agencies of the Federal Government

Sec. 404. Expired Provision.

This section would repeal Section 8(a)(2) of the Small Business Act, which expired on September 30, 1988. The subject matter of this provision was included in Section 7(j)(13)(D) by a provision of P.L. 100–656, the "Business Opportunity Development Reform Act of 1988".

Part B—Technical Amendments

Sec. 411. Technical Amendments.

This section makes a series of technical corrections throughout various provisions of the Small Business Act, correcting grammatical errors and modernizing citations.

TITLE V—DEFINITIONS

Sec. 501. Historically Underutilized Business.

This section would substitute the term "historically underutilized business" for the term "socially and economically disadvantaged small business concern". It would not alter the existing statutory requirements regarding who is presumed to be socially disadvantaged or may demonstrate their status as being economically disadvantaged. Similarly unchanged are the current requirements that the firm must be owned and its day-to-day business operations controlled by individuals who are both socially and economically disadvantaged.

The adoption of the term "historically underutilized business" to replace the term "small disadvantaged business" (to describe a small business concern owned and controlled by socially disadvantaged individuals) was one of the recommendations of the Commission Minority Business Development (established by Section 505 of Public Law 100–656 for the purpose of reviewing and assessing all Federal programs intended to foster the development of minority-owned businesses). The Commission's Final Report noted that the currently prevalent term "small disadvantaged business" (SDB) tends to have the effect of demeaning from the outset the capabilities of the firm, which may be substantial, even if the firm is owned and controlled by socially and economically disadvantaged individuals.

Sec. 502. Emerging Small Business Concern.

Subsection (a) of this section establishes a new definition of "emerging small business concern". An emerging small business concern is one which has not yet achieved 25 percent of the applicable SBA numerical size standard as a small business concern.

Subsection (b) of this section makes explicit that the existing definition of "emerging small business concern" established by Section 718(b) of the Small Business Competitiveness Demonstration Act of 1988, Title VII of Public Law 100–656, remains unaffected. For the purpose of the Small Business Competitiveness Demonstration Program, an emerging small business concern shall continue to be a small business concern that has not exceeded 50 percent of the applicable SBA numerical size standard for determining whether a business concern may claim to be a small business concern.

TITLE VI—REGULATORY IMPLEMENTATION AND EFFECTIVE DATES

Part A—Assuring Regulatory Implementation

Sec. 601. Deadlines for Issuance of Proposed and Final Regulations.

Subsection (a) of this section requires that proposed regulations implementing the Business Development Opportunity Act of 1994 be published within 120 days of enactment. It further requires that the public be afforded at least 60 days to provide comments on the proposed regulations.

Subsection (b) establishes a statutory deadline for the issuance of the final regulations implementing the Act. Final regulations must be issued within 270 days from the date of enactment.

Sec. 602. Regulatory Implementation of Prior Legislation.

This section establishes a statutory schedule for the issuance of proposed and final regulations implementing provisions previously enacted which have yet to be implemented through published regulations. Subsection (c) lists the provisions of law covered by this section. Some have remained without implementing regulations for more than three years.

Part B—Effective Dates

Sec. 611. Effective Dates.

This section establishes the effective dates for the various provisions of the "Business Opportunity Development Act of 1994".•

• Ms. MOSELEY-BRAUN. Mr. President, at the outset, I want to thank Senator JOHN KERRY for his leadership on behalf of small businesses that are owned and controlled by socially and economically disadvantaged individuals.

I am proud to be an original cosponsor of this legislation and I am particularly pleased that some suggestions I made to Senator KERRY are included in this bill: Particularly developmental teaming agreements, and the improved notice of subcontracting opportunities.

The purpose of the Developmental Teaming Program is to foster the business development and long-term business success of firms participating in the Minority Enterprise Development Program. Encouraging the formation of teaming arrangements and long-term strategic business alliances between such firms and firms that have graduated from the Minority Enterprise Development Program will help enhance these firm's overall business performance.

Historically, firms owned by socially and economically disadvantaged individuals have had difficulty in the initial stages of business development, and these developmental teaming agreements will provide these start-up firms with the kind of assistance that will help them succeed. Specifically, developmental teaming agreements will provide critical assistance targeted to developmental 8(a) firms in those areas that are most important for sustained business growth. The graduating firm will provide business management, financial management, organizational management, and personnel management assistance along with marketing and proposal preparation skills, production inventory control, and quality assurance. The graduate firm can award subcontracts to their teaming firm and give financial assistance in the form of loans, loan guarantees, surety bonding, advance payments, and accelerated progress payments.

The developmental teaming agreements must first be approved by the Small Business Administration, and would last 3 years with an option to renew the agreement for an additional 2 years.

The provisions within this bill will also allow for the improved notice of subcontracting opportunities by requesting that all subcontracting opportunities and awards above $100,000 be published in the Commerce Business Daily. This will provide the information subcontractors need to submit proposals on contract opportunities that have not previously been made public.

The objective of this amendment is to gain equal access to subcontracting opportunities. Firms need to be aware of subcontracting opportunities in order to pursue competitive contracts.

In 1992, 50 firms or fewer than 2 percent of all 8(a) companies, received about $1.5 billion, or 40 percent of the nearly $4 billion in 8(a) contracts awarded during that year. This legislation would assist 8(a) firms in the self-marketing process by allowing them access to information.

These provisions will assist 8(a) firms in becoming successful. The Small Business Administration's 8(a) Program needs real reform and I believe that the Business Development Opportunity Act will help the SBA assist 8(a) firms in becoming more successful.

Although we will not move this legislation through Congress this year, I will work closely with Senator KERRY and the Small Business Committee to pass this bill in the next Congress.

I would like to again thank Senator KERRY for including my provisions in this bill. Senator KERRY should be commended for his leadership on behalf of small businesses across the United States.●

● Mr. PRESSLER. Mr. President, I rise today as an original cosponsor of the Business Development Opportunity Act of 1994. This legislation, introduced today by the Senator from Massachusetts, Senator KERRY, takes an important step forward in improving business and enterprise opportunities for socially and economically disadvantaged individuals.

The bill marks the first significant legislative action on the Small Business Administration's [SBA] Minority Business Development/Capital Ownership Development [MBD/COD] Program since 1988. As my colleagues well know, to say the MBD/COD Program—also known as the 8(a) program—has not received rave reviews over its lifetime is an extreme understatement. Though this program has proven beneficial for many disadvantaged firms, these successes have been overshadowed by stories of failure, waste, fraud, and abuse. In fact, SBA Administrator Erskine Bowles once referred to the 8(a) program as "a mess." The Small Business Committee, of which I am the ranking member, recently held two hearings on the 8(a) program, both of which explored many of its problems.

The first hearing, held on July 27, 1994, included the General Accounting Office [GAO], the SBA inspector general, and the Department of Defense inspector general. Witnesses presented the administration's views on the program. The second hearing, held on August 9, 1994, provided a forum to discuss the SBA's proposed Minority Enterprise Development [MED] Program and Senator KERRY's Business Opportunity Act. Both of these hearings were instrumental in developing the legislation we are introducing today. Through the testimony of witnesses, I was able to see more clearly the flaws within the current program. More importantly, committee members were able to identify solutions to those problems.

I commend Senator KERRY for his able leadership in this area. I also want to thank my colleague for his cooperation in addressing several concerns I had with the bill. However, I should note my concern over the fact that many questions I submitted in writing to panelists at the oversight hearings remain unanswered. I believe these responses could play an important role in further developing this reform legislation. Upon receipt of those responses, I may consider further amendments to fine tune the bill. Failure to address comprehensively the 8(a) program flaws that allow waste, fraud, and abuse to continue would be a failure to legislate responsibly.

A significant portion of changes I considered necessary already have been made. First, the initial version of the legislation did not address the widely acknowledged problem of disparity in award distribution. Of the inequitable distribution of awards among firms and areas of the country, GAO stated that despite past congressional action to correct this problem, "the concentration of 8(a) contracts * * * is a long-standing condition that is continuing." GAO continued by noting that approximately 1 percent—50 of the 5,382 firms in the program as of 1994—received 33 percent of all 8(a) contract dollars. I believe the revised version of this bill takes an active approach toward correcting this inequity. Section 106 requires the SBA to develop an outreach plan aimed at increasing participation among different firms located across the Nation. With this provision, it is my hope the new Minority Enterprise Development [MED] Program will extend its helpful reach beyond beltway firms to those in States like South Dakota.

Another area in which I expressed concern involves competition requirements for 8(a) participants. Again, this was an issue GAO identified in the July 27 hearing as a problem within the current program. According to GAO, the purpose of maintaining competitiveness thresholds and targets is "to help develop [8(a)] firms and better prepare them to compete in the commercial marketplace." Exposing 8(a) participants to competition plays an extremely important role in preparing disadvantaged firms for success once they graduate and enter the free market. Unfortunately, the SBA has failed to implement an adequate competitive and sole-source mix requirement. In addition, it has failed to sufficiently monitor this important developmental tool.

This bill highlights the importance of the competitive experience for 8(a) firms. Through discussions with Senator KERRY, he and I developed a provision that would create more effective business mix targets within the program. Under the revised version of this bill, participants eventually would have to conduct no less than 80 percent of their total sales outside the 8(a) program. Another provision I worked to revise would limit the number of competitive awards that derive from 8(a) competitions to 50 percent. In its original form, this bill would have allowed 8(a) firms to graduate from the program without ever having competed for a contract with non 8(a) firms.

Another concern I had was the proposed increase in the sole-source setaside from 5 percent to 8 percent. Not only would such a change have increased dependence on sole-source contracts and eliminated the need for competitive bidding, it also would have placed more emphasis on the contracting portion of the MED Program, overshadowing its extremely important business development mission. This proposed increase also raised concerns over the ability of non 8(a) small business to have a fair opportunity to contract with the Federal Government. Thus, I am extremely pleased the current form of this bill retains the five percent goal.

The final issue regarding competition requirements of concern to me would have allowed the SBA to make exceptions to the $3 million and $5 million competitiveness thresholds. Though the history of fraud within this program leaves me somewhat reluctant to allow any exception, section 133 now allows the SBA to waive the competitiveness thresholds only under certain circumstances. This provision also would limit any such award to a value twice the threshold. By holding the Associate Administrator for Minority Enterprise Development accountable, this new provision should prevent abuse of such a waiver.

The last issue I wish to discuss is section 116, establishing "Developmental Teaming" agreements between MED participants and graduates. This would allow experienced businesses to pass their knowledge on to fledgling firms and developing firms to subcontract a portion of 8(a) awards to graduated firms. My hope is that developing firms will be able to capitalize on the experience of graduated firms and that such relationships will enhance SBA's business development assistance. I do have concerns, however. Though existing provisions limit participation, I hope this measure will not encourage graduated firms to remain dependent on 8(a) awards or developing firms to become "front companies."

Though this bill is not perfect, I believe it takes a responsible approach to making the SBA 8(a) Program more effective. It makes changes necessary to aid participants, agencies, and the administration alike. I remain committed to making this program more efficient and more effective through increased competition and stricter oversight. The language contained in this legislation represents months of hard work and consideration by members and staff alike.

I again would like to thank my good friend, Senator KERRY, for his hard work and leadership on this issue. As I mentioned, I intend to consider additional improvements to this bill as necessary. In order to ensure quality policy, it is absolutely necessary to keep this legislation open to suggestions and ideas. I look forward to working with my colleague as this bill continues through the legislative process.●

By Mrs. MURRAY:

S. 2479. A bill to promote the construction and operation of U.S. flag cruise vessels in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

UNITED STATES CRUISE VESSEL DEVELOPMENT ACT

● Mrs. MURRAY. Mr. President, today I introduce S. 2479, a bill to promote the construction and operation of U.S. flag cruise vessels in the United States. This bill is almost identical to a provision that Representative UNSOELD successfully incorporated into the Coast Guard authorization bill which recently passed in the House. The bill would encourage the domestic construction of U.S. cruise ships and create more cruise ship activity in our ports. It would allow certain foreign-built ships into the domestic trade provided that another cruise ship is built by the operator in a U.S. shipyard. In addition, the bill guarantees that the majority interest in these vessels will be in U.S. hands. The bill also gives these ships preference for permits to enter National Park Service marine sites.

This bill is needed immediately to allow the U.S. ports in the Pacific Northwest to share in the lucrative and expanding cruise ship trade to Alaska. Although the vast majority of the passengers are U.S. citizens, Vancouver, Canada, has become the primary port of departure. Vancouver is the major economic beneficiary of this cruise ship trade. Vancouver saw 263 cruise ship sailings in 1993, which was estimated to add $120 million to the local economy in that year alone. All industry observers expect this trade to continue to expand for at least another decade.

The bill would change the Passenger Service Act to promote American maritime jobs, American shipbuilding jobs and economic opportunities in American ports. As the facts stand now, aside from two ocean-going cruise ships deployed solely in the Hawaii inter-island trade, every major cruise ship is foreign-built and operated. This bill makes it clear that none of the vessels allowed under this provision could compete with the Hawaiian vessels.

This bill is a modest attempt to create a domestic cruise ship industry and encourage ship building. Over time, I will seek additional ways to encourage this industry. Nevertheless, if only a few ships take advantage of this bill, its significance will be substantial. It has been estimated that 20 homeport calls can pump $7 million into a local economy, create 100 jobs, and generate $300,000 in local taxes.

I urge my colleagues to support me in passing this bill.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Cruise Vessel Development Act of 1994".

SEC. 2. PURPOSE.

The purpose of this Act is to promote construction and operation of United States flag cruise vessels in the United States.

SEC. 3. COASTWISE TRANSPORTATION OF PASSENGERS.

Section 8 of the Act entitled "An Act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes", approved June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289), is amended to read as follows:

"SEC. 8. COASTWISE TRANSPORTATION OF PASSENGERS.

"(a) IN GENERAL.—Except as otherwise provided by law, a vessel may transport passengers in coastwise trade only if—

"(1) the vessel is owned by a person that is—

"(A) an individual who is a citizen of the United States; or

"(B) a corporation, partnership, or association that is a citizen of the United States under section 2(a) of the Shipping Act, 1916 (46 App. U.S.C. 802(a));

"(2) the vessel meets the requirements of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883); and

"(3) for a vessel that is at least 5 net tons, the vessel is issued a certificate of documentation under chapter 121 of title 46, United States Code, with a coastwise endorsement.

"(b) EXCEPTION FOR VESSEL UNDER DEMISE CHARTER.—

"(1) IN GENERAL.—Subsection (a)(1) does not apply to a cruise vessel operating under a demise charter that—

"(A) has a term of at least 18 months; and

"(B) is to a person described in subsection (a)(1).

"(2) EXTENSION OF PERIOD FOR OPERATION.—A cruise vessel authorized to operate in coastwise trade under paragraph (1) based on a demise charter described in paragraph (1) may operate in that coastwise trade during a period following the termination of the charter of not more than 6 months, if the operation—

"(A) is approved by the Secretary; and

"(B) is in accordance with such terms as may be prescribed by the Secretary for that approval.

"(c) EXCEPTION FOR VESSEL TO BE REFLAGGED.—

"(1) EXCEPTION.—Subsection (a)(2) and section 12106(a)(2)(A) of title 46, United States Code, do not apply to a cruise vessel if—

"(A) the vessel—

"(i) is not documented under chapter 121 of title 46, United States Code, on the date of enactment of the United States Cruise Vessel Development Act of 1994; and

"(ii) is not less than 5 years old and not more than 15 years old on the first date that the vessel is documented under that chapter after that date of enactment; and

"(B) the owner or charterer of the vessel has entered into a contract for the construction in the United States of another cruise vessel that has a total berth or stateroom capacity that is at least 80 percent of the capacity of the cruise vessel.

"(2) TERMINATION OF AUTHORITY TO OPERATE.—Paragraph (1) does not apply to a vessel after the date that is 18 months after the date on which a certificate of documentation with a coastwise endorsement is first issued for the vessel after the date of enactment of the United States Cruise Vessel Development Act of 1994 if, before the end of that 18-month period, the keel of another vessel has not been laid, or another vessel is not at a similar stage of construction, under a contract required for the vessel under paragraph (1)(B).

"(3) EXTENSION OF PERIOD BEFORE TERMINATION.—The Secretary of Transportation may extend the 18-month period under paragraph (2) for an additional period of not to exceed 6 months for good cause shown.

"(d) LIMITATION ON OPERATIONS.—A person (including a related person with respect to that person) who owns or charters a cruise vessel operating in coastwise trade under subsection (b) or (c) under a coastwise endorsement may not operate any vessel between—

"(1) any 2 ports served by another cruise vessel that transports passengers in coastwise trade under subsection (a) on the date the Secretary issues the coastwise endorsement; or

"(2) any of the islands of Hawaii.

"(e) PENALTIES.—

"(1) CIVIL PENALTY.—A person operating a vessel in violation of this section is liable to the United States Government for a civil penalty of $1,000 for each passenger transported in violation of this section.

"(2) FORFEITURE.—A vessel operated in knowing violation of this section, and its equipment, are liable to seizure by and forfeiture to the United States Government.

"(3) DISQUALIFICATION FROM COASTWISE TRADE.—A person that is required to enter into a construction contract under subsection (c)(1)(B) with respect to a cruise vessel (including any related person with respect to that person) may not own or operate any vessel in coastwise trade after the period applicable under subsection (c)(2) with respect to the cruise vessel, if before the end of that period a keel is not laid and a similar stage of construction is not reached under such a contract.

"(f) DEFINITIONS.—In this section—

"(1) the term 'coastwise trade' includes transportation of a passenger between points in the United States, either directly or by way of a foreign port;

"(2) the term 'cruise vessel' means a vessel that—

"(A) is at least 10,000 gross tons (as measured under chapter 143 of title 46, United States Code);

"(B) has berth or stateroom accommodations for at least 200 passengers; and

"(C) is not a ferry; and

"(3) the term 'related person' means, with respect to a person—

"(A) a holding company, subsidiary, affiliate, or association of the person; and

"(B) an officer, director, or agent of the person or of an entity referred to in subparagraph (A).".

SEC. 4. CONSTRUCTION STANDARDS.

Section 3309 of title 46, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) A vessel described in paragraph (3) is deemed to comply with parts B and C of this subtitle.

"(2) The Secretary shall issue a certificate of inspection under subsection (a) to a vessel described in paragraph (3).

"(3) A vessel is described in this paragraph if—

"(A) the vessel meets the standards and conditions for the issuance of a control verification certificate to a foreign vessel embarking passengers in the United States;

"(B) a coastwise endorsement is issued for the vessel under section 12106 of this title after the date of enactment of the United States Cruise Vessel Development Act of 1994; and

"(C) the vessel is authorized to engage in coastwise trade by reason of subsection (c) of section 8 of the Act entitled 'An Act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes', approved June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289).".

SEC. 5. CITIZENSHIP FOR PURPOSES OF DOCUMENTATION.

Section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), is amended—

(1) in subsection (a) by inserting "other than primarily in the transport of passengers," after "the coastwise trade"; and

(2) by adding at the end the following new subsection:

"(e) For purposes of determining citizenship under subsection (a) with respect to operation of a vessel primarily in the transport of passengers in coastwise trade, the controlling interest in a partnership or association that owns the vessel shall not be deemed to be owned by citizens of the United States unless a majority interest in the partnership or association is owned by citizens of the United States free from any trust or fiduciary obligation in favor of any person that is not a citizen of the United States.".

SEC. 6. AMENDMENT TO TITLE XI OF THE MERCHANT MARINE ACT, 1936.

Section 1101(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(b)) is amended by striking "passenger cargo" and inserting "passenger, cargo,".

SEC. 7. PERMITS FOR VESSELS ENTERING UNITS OF NATIONAL PARK SYSTEM.

(a) PRIORITY.—Notwithstanding any other provision of law, the Secretary of the Interior may not permit a person to operate a vessel in any unit of the National Park System except in accordance with the following priority:

(1) First, any person that—

(A) will operate a vessel that is documented under the laws of, and the home port of which is located in, the United States; or

(B) holds rights to provide visitor services under section 1307(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197(a)).

(2) Second, any person that will operate a vessel that—

(A) is documented under the laws of a foreign country, and

(B) on the date of the enactment of this Act is permitted to be operated by the person in the unit.

(3) Third, any person that will operate a vessel other than a vessel described in paragraph (1) or (2).

(b) REVOCATION OF PERMITS FOR FOREIGN-DOCUMENTED VESSELS.—The Secretary of the Interior shall revoke or refuse to renew permission granted by the Secretary for the operation of a vessel documented under the laws of a foreign country in a unit of the National Park System, if—

(1) a person requests permission to operate a vessel documented under the laws of the United States in that unit; and

(2) the permission may not be granted because of a limit on the number of permits that may be issued for that operation.

(c) RESTRICTIONS ON REVOCATION OF PERMITS.—The Secretary of the Interior may not revoke or refuse to renew permission under subsection (b) for any person holding rights to provide visitor services under section 1307(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197(a)).

(d) RETURN OF PERMITS.—Any person whose permission to provide visitors services in a unit of the National Park System has been revoked or not renewed under subsection (b) shall have the right of first refusal to a permit to provide visitors services in that unit of the National Park System that becomes available when the conditions described in subsection (b) no longer apply. Such right shall be limited to the number of permits which are revoked or not renewed.●

By Mr. SIMPSON:

S. 2480. A bill to amend the Immigration and Nationality Act to add provisions relating to the treatment of criminal aliens under the immigration laws of the United States, and for other purposes.

CRIMINAL ALIENS AND VISA WAIVER EXTENSION ACT

Mr. SIMPSON. Mr. President, I rise today to introduce a bill which addresses three issues: the expeditious deportation of criminal aliens, a 7-day extension of the visa waiver program, and provisions, which for the duration of this extension of the visa waiver program, would allow certain countries to participate.

The expeditious deportation of criminal aliens provisions were unanimously passed by the Senate in the crime bill, but were stripped in conference. This bill would also expand the definition of "aggravated felony" so that aliens convicted of serious crimes can be swiftly deported. It would allow the Attorney General to enter a deportation order against an alien convicted of a serious crime and thereby eliminate the current complex administrative deportation process. However, the convicted felon would still be entitled to due process through a more limited judicial review of the deportation order. It would allow a Federal judge to enter an order of deportation against an alien convicted of a serious crime at the time of the criminal sentencing. It would restrict certain defenses against deportation available to criminal aliens who have been sentenced to 5 or more years. Current law only restricts these defenses after the alien has served 5 or more years. It would expand the use of the criminal aliens tracking center funded in this year's crime bill. The criminal alien tracking center assists Federal, State, and local law enforcement agencies in identifying criminal aliens.

The bill also extends the current visa waiver program for 7 days. The visa waiver program allows tourists from countries whose nationals have a proven record of returning home when their visas expire to enter the United States without a visa. This vital program frees up the resources of U.S. consular offices abroad and facilitates travel to the United States for many law-abiding foreign tourists.

The visa waiver program expires this Saturday. By extending this program for 7 days, Congress will be afforded the time necessary to pass the 2 year extension contained in another bill, H.R. 783, the Immigration and Nationality Technical Corrections Act of 1994.

Finally, for the duration of this extension, the bill provides a probationary status for certain countries to participate in the visa waiver program. To qualify for the probationary status, a country must: First, have a good record of its nationals returning home when their visas expire—even though its record does not quite meet the present standards required in the current program; and second, show an improvement in its record during its probationary status.

At present, Ireland is the only country which qualifies for this status, however, more may qualify in the future.

It is not my intention to derail the important visa waiver program. And, I do not oppose the opportunity for countries to qualify for this new probationary status. Nevertheless, my top legislative priority, one which I have worked so very closely with—and have had the cooperation of the Attorney General—is the enactment of the criminal alien deportation provisions. I intend to diligently continue this effort.

I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2480

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION OF DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

"(E) an offense described in—

"(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

"(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

"(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 33 months;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

"(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed;

"(K) an offense that—

"(i) relates to the owning, controlling, managing, or supervising of a prostitution business; or

"(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(L) an offense relating to perjury or subornation of perjury if the offense involved causing or threatening to cause physical injury to a person or damage to property;

"(M) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(N) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

"(O) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(P) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) which constitutes trafficking in the documents described in such section;

"(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and

"(R) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered on or after the date of enactment of this Act.

SEC. 2. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(f) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216 or 216A) at the time that proceedings under this section commenced.

"(3) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in his discretion.

"(4) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 106.

"(5) Pending a determination of deportability under this section, the Attorney General shall not release the alien. An order of deportation entered pursuant to this section shall be executed by the Attorney General in accordance with section 243. Proceedings before the Attorney General under this section shall be in accordance with such regulations as the Attorney General shall prescribe and shall include requirements that provide that—

"(A) the alien is given reasonable notice of the charges;

"(B) the alien has an opportunity to have assistance of counsel at no expense to the government and in a manner that does not unduly delay the proceedings;

"(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

"(D) the determination of deportability is supported by reasonable, substantial, and probative evidence; and

"(E) the final order of deportation is not adjudicated by the same person who issued such order.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AMENDMENTS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting the following:

"(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—

"(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) in subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) by striking subsection (c);

(4) in subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) in subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)";

(6) by redesignating subsection (f), as added by subsection (a) of this section, as subsection (c);

(7) by inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be deportable from the United States."; and

(8) by amending the section heading to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 3. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—

"(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the Service, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order or deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking "The" and inserting "Except as provided in section 242A(d), the".

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to alter the privilege of being represented at no expense to the Government set forth in section 292 of the Immigration and Nationality Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 4. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN CRIMINAL ALIENS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final. For purposes of this section, the term 'sentence' does not include a sentence the execution of which was suspended in its entirety.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended—

(1) by striking the final sentence and inserting the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(2) by striking "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 5. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media, in the discretion of the special inquiry officer, or, where waived or agreed to by the parties, in the absence of the alien.".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

SEC. 6. CRIMINAL ALIEN TRACKING CENTER.

(a) OPERATION.—The Attorney General shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

(b) PURPOSE.—The criminal alien tracking center shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

SEC. 7. EXTENSION OF VISA WAIVER PILOT PROGRAM.

Section 217(f) of the Immigration and Nationality Act (8 U.S.C. 1187(f)) is amended by striking "ending" and all that follows through the period and inserting "ending on October 7, 1994".

SEC. 8. CREATION OF PROBATIONARY STATUS FOR PARTICIPANT COUNTRIES IN THE VISA WAIVER PROGRAM.

Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in subsection (a)(2)(B) by inserting before the period "or is designated as a pilot program country with probationary status under subsection (g)";

(2) by adding at the end the following new subsection:

"(g) PILOT PROGRAM COUNTRY WITH PROBATIONARY STATUS.—

"(1) IN GENERAL.—The Attorney General and the Secretary of State acting jointly may designate any country as a pilot program country with probationary status if it meets the requirements of paragraph (2).

"(2) QUALIFICATIONS.—A country may not be designated as a pilot program country with probationary status unless the following requirements are met:

"(A) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of the country during the two previous full fiscal years was less than 3.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS YEAR.—The number of refusals of

nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was less than 3 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) LOW EXCLUSIONS AND VIOLATIONS RATE FOR PREVIOUS YEAR.—The sum of—

"(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 1.5 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

"(D) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

"(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS FOR PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS.—The designation of a country as a pilot program country with probationary status shall terminate if either of the following occurs:

"(A) The sum of—

"(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as visitors during the preceding fiscal year and who violated the terms of such admission,

is more than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

"(B) The country is not designated as a pilot program country under subsection (c) within 3 fiscal years of its designation as a pilot program country with probationary status under this subsection.".

"(4) DESIGNATION OF PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS AS PILOT PROGRAM COUNTRIES.—In the case of a country which was a pilot program country with probationary status in the preceding fiscal year, a country may be designated by the Attorney General and the Secretary of State, acting jointly, as a pilot program country under subsection (c) if—

"(A) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(B) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such preceding fiscal year."; and

(3) in subsection (c)(2) by striking "A country" and inserting "Except as provided in subsection (g)(4), a country".

By Mr. REID (for himself, Mr. BIDEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BRYAN, Mr. D'AMATO, Mr. DORGAN, Mr. GLENN, Mr. HOLLINGS, Mr. LEVIN, Mr. PELL, Mr. RIEGLE, Mr. ROCKEFELLER, and Mr. SASSER):

S.J. Res. 225. A joint resolution to designate February 5, 1995, through February 11, 1995, and February 4, 1996, through February 10, 1996, as "National Burn Awareness Week"; to the Committee on the Judiciary.

NATIONAL BURN AWARENESS WEEK

• Mr. REID. Mr. President, I rise today to introduce a joint resolution designating the first week in February of both 1995 and 1996 as National Burn Awareness Week.

1995 will host the 10th Annual National Burn Awareness Week. The purpose is to bring national attention to the serious problem of injuries and deaths due to burns. It has been proven that over 75 percent of all burn injuries and deaths could be prevented if the general public were made aware that they can make a difference.

Ten years ago, a few dedicated individuals dreamed that there would be national awareness and recognition of the seriousness of the burn problem in the United States. They formed the Burn Awareness Coalition and developed a national task force and advisory board composed of members of the medical, fire fighting, and general burn prevention community. Over the years, they have produced materials used to educate the general public about the burn problem, expanded media connections, and reached millions of individuals. This has all been done with donations from concerned sponsors, with no Government funding.

The Coalition has come a long way since the first National Burn Awareness Week. The response to date has been tremendous. Most of the burn centers, emergency rooms, fire fighters, and educators across the country are using National Burn Awareness Week materials throughout the year to educate the public and save lives.

There have been many success stories. Senior citizen groups have used National Burn Awareness Week materials to force landlords to reduce the water temperature in hot water heaters. Children have learned how to escape burning homes through what they have learned from fire fighters and school teachers. Parents have been told by children to put batteries in smoke detectors. Burn centers and fire departments have given smoke detectors for birthday presents which have saved lives.

This important program saves lives and reduces pain and suffering. I urge my colleagues to support this resolution which will recognize the great benefits of National Burn Awareness Week.•

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 39, a bill to amend the National Wildlife Refuge Administration Act.

S. 257

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 257, a bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self- initiation of mining claims, and for other purposes.

S. 1288

At the request of Mr. AKAKA, the names of the Senator from Iowa [Mr. HARKIN] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 1288, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture commercialization research program, and for other purposes.

S. 1889

At the request of Mr. CHAFEE, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 1889, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.

S. 1976

At the request of Mr. DODD, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1976, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 2071

At the request of Mr. LIEBERMAN, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 2071, a bill to provide for the application of certain employment protection and information laws to the Congress and for other purposes.

S. 2101

At the request of Mr. BRADLEY, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2101, a bill to provide for the establishment of mandatory State-operated comprehensive one-call systems to protect all underground facilities from being damaged by any excavations, and for other purposes.

S. 2264

At the request of Mr. DORGAN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 2264, a bill to provide for certain protections in the sale of a short line railroad, and for other purposes.

S. 2294

At the request of Mr. HATFIELD, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2294, a bill to amend the Public Health Service Act to provide for the

expansion and coordination of research concerning Parkinson's disease and related disorders, and to improve care and assistance for its victims and their family caregivers, and for other purposes.

S. 2375

At the request of Mr. LEAHY, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2375, a bill to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes,

S. 2411

At the request of Mr. DOLE, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2411, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 2460

At the request of Mr. CHAFEE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 2460, a bill to extend for an additional 2 years the period during which medicare select policies may be issued.

SENATE JOINT RESOLUTION 219

At the request of Mr. LEAHY, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Joint Resolution 219, a joint resolution to commend the United States rice industry, and for other purposes.

SENATE RESOLUTION 264

At the request of Mr. MCCAIN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Resolution 264, a resolution expressing the sense of the Senate that the President should issue an Executive order to promote and expand Federal assistance for Indian institutions of higher education and foster the advancement of the National Education Goals for Indians.

SENATE RESOLUTION 270

At the request of Mr. MURKOWSKI, the name of the Senator from Tennessee [Mr. MATHEWS] was added as a cosponsor of Senate Resolution 270, a resolution to express the sense of the Senate concerning United States relations with Taiwan.

AMENDMENTS SUBMITTED

DISTRICT OF COLUMBIA APPROPRIATIONS ACT FOR FISCAL YEAR 1995

DOLE (AND DOMENICI) AMENDMENT NO. 2599

Mr. DOMENICI (for Mr. DOLE, for himself and Mr. DOMENICI) proposed an amendment to amendment No. 2594 proposed by Mr. COHEN to the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes; as follows:

In the pending amendment after the word "subtitle" insert the following

Subtitle ___—Enhanced Penalties for Health Care Fraud

PART 1—ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM

SEC. ___01. ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—Not later than January 1, 1995, the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary"), acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to the delivery of and payment for health care in the United States,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B of the Social Security Act and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section ___03.

(2) COORDINATION WITH HEALTH PLANS.—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) REGULATIONS.—

(A) IN GENERAL.—The Secretary and the Attorney General shall by regulation establish standards to carry out the program under paragraph (1).

(B) INFORMATION STANDARDS.—

(i) IN GENERAL.—Such standards shall include standards relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) CONFIDENTIALITY.—Such standards shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.—The provisions of section 1157(a) of the Social Security Act (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section, in the same manner as such section applies to information provided to organizations with a contract under subtitle B of title V of this Act, with respect to the performance of such a contract.

(C) DISCLOSURE OF OWNERSHIP INFORMATION.—

(i) IN GENERAL.—Such standards shall include standards relating to the disclosure of ownership information described in clause (ii) by any entity providing health care services and items.

(ii) OWNERSHIP INFORMATION DESCRIBED.—The ownership information described in this clause includes—

(I) a description of such items and services provided by such entity;

(II) the names and unique physician identification numbers of all physicians with a financial relationship (as defined in section 1877(a)(2) of the Social Security Act) with such entity;

(III) the names of all other individuals with such an ownership or investment interest in such entity; and

(IV) any other ownership and related information required to be disclosed by such entity under section 1124 or section 1124A of the Social Security Act, except that the Secretary shall establish procedures under which the information required to be submitted under this subclause will be reduced with respect to health care provider entities that the Secretary determines will be unduly burdened if such entities are required to comply fully with this subclause.

(4) AUTHORIZATION OF APPROPRIATIONS FOR INVESTIGATORS AND OTHER PERSONNEL.—In addition to any other amounts authorized to be appropriated to the Secretary and the Attorney General for health care anti-fraud and abuse activities for a fiscal year, there are authorized to be appropriated additional amounts as may be necessary to enable the Secretary and the Attorney General to conduct investigations and audits of allegations of health care fraud and abuse and otherwise carry out the program established under paragraph (1) in a fiscal year.

(5) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise the authority described in paragraphs (4) and (5) of section 6 of the Inspector General Act of 1978 (relating to subpoenas and administration of oaths) with respect to the activities under the all-payer fraud and abuse control program established under this subsection to the same extent as such Inspector General may exercise such authorities to perform the functions assigned by such Act.

(6) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978.

(7) HEALTH PLAN DEFINED.—For the purposes of this subsection, the term "health plan" shall have the meaning given such term in section 1128(i) of the Social Security Act.

(b) HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is hereby established an account to be known as the "Health Care Fraud and Abuse Control Account" (in this section referred to as the "Anti-Fraud Account"). The Anti-Fraud Account shall consist of—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Anti-Fraud Account as provided in subsection (a)(4), sections ___41(b) and ___42(b), and title XI of the Social Security Act except for those penalties attributable to laws in existence prior to the enactment of this Act; and

(iii) such amounts as are transferred to the Anti-Fraud Account under subparagraph (C).

(B) AUTHORIZATION TO ACCEPT GIFTS.—The Anti-Fraud Account is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Anti-Fraud Account, for the benefit of the Anti-Fraud Account or any activity financed through the Anti-Fraud Account.

(C) TRANSFER OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall transfer to the Anti-Fraud Account an amount equal to the sum of the following:

(I) Criminal fines imposed in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

(ii) Administrative penalties and assessments imposed under titles XI, XVIII, and XIX of the Social Security Act (except as otherwise provided by law except for those penalties attributable to laws in existence prior to the enactment of this Act).

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

(iv) Penalties and damages imposed under the False Claims Act (31 U.S.C. 3729 et seq.), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator or for restitution except for those penalties attributable to laws in existence prior to the enactment of this Act).

(2) USE OF FUNDS.—

(A) IN GENERAL.—Amounts in the Anti-Fraud Account shall be available without appropriation and until expended as determined jointly by the Secretary and the Attorney General of the United States in carrying out the health care fraud and abuse control program established under subsection (a) (including the administration of the program), and may be used to cover costs incurred in operating the program, including costs (including equipment, salaries and benefits, and travel and training) of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);

(ii) investigations;

(iii) financial and performance audits of health care programs and operations;

(iv) inspections and other evaluations; and

(v) provider and consumer education regarding compliance with the provisions of this subtitle.

(B) FUNDS USED TO SUPPLEMENT AGENCY APPROPRIATIONS.—It is intended that disbursements made from the Anti-Fraud Account to any Federal agency be used to increase and not supplant the recipient agency's appropriated operating budget.

(3) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Anti-Fraud Account in each fiscal year.

(4) USE OF FUNDS BY INSPECTOR GENERAL.—

(A) REIMBURSEMENTS FOR INVESTIGATIONS.—The Inspector General is authorized to receive and retain for current use reimbursement for the costs of conducting investigations, when such restitution is ordered by a court, voluntarily agreed to by the payer, or otherwise.

(B) CREDITING.—Funds received by the Inspector General as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of their deposit.

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SEC. ___02. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO ALL FRAUD AND ABUSE AGAINST ANY HEALTH PLAN.

(a) CRIMES.—

(1) SOCIAL SECURITY ACT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended as follows:

(A) In the heading, by adding at the end the following: "OR HEALTH PLANS".

(B) In subsection (a)(1)—

(i) by striking "title XVIII or" and inserting "title XVIII,", and

(ii) by adding at the end the following: "or a health plan (as defined in section 1128(i)),".

(C) In subsection (a)(5), by striking "title XVIII or a State health care program" and inserting "title XVIII, a State health care program, or a health plan".

(D) In the second sentence of subsection (a)—

(i) by inserting after "title XIX" the following: "or a health plan", and

(ii) by inserting after "the State" the following: "or the plan".

(E) In subsection (b)(1), by striking "title XVIII or a State health care program" each place it appears and inserting "title XVIII, a State health care program, or a health plan".

(F) In subsection (b)(2), by striking "title XVIII or a State health care program" each place it appears and inserting "title XVIII, a State health care program, or a health plan".

(G) In subsection (b)(3), by striking "title XVIII or a State health care program" each place it appears in subparagraphs (A) and (C) and inserting "title XVIII, a State health care program, or a health plan".

(H) In subsection (d)(2)—

(i) by striking "title XIX," and inserting "title XIX or under a health plan,", and

(ii) by striking "State plan," and inserting "State plan or the health plan,".

(2) IDENTIFICATION OF COMMUNITY SERVICE OPPORTUNITIES.—Section 1128B of such Act (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

"(f) The Secretary may—

"(1) in consultation with State and local health care officials, identify opportunities for the satisfaction of community service obligations that a court may impose upon the conviction of an offense under this section, and

"(2) make information concerning such opportunities available to Federal and State law enforcement officers and State and local health care officials.".

(b) HEALTH PLAN DEFINED.—Section 1128 of the Social Security Act (42 U.S.C. 1320a–7) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) HEALTH PLAN DEFINED.—For purposes of sections 1128A and 1128B, the term 'health plan' means a public or private programs for the delivery of or payment for health care items or services.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

SEC. ___03. HEALTH CARE FRAUD AND ABUSE GUIDANCE.

(a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

(1) IN GENERAL.—

(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1995, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act the (42 U.S.C. 1320a–7b(b)) and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act (42 U.S.C. 1320a–7(b)(7));

(iii) interpretive rulings to be issued pursuant to subsection (b); and

(iv) special fraud alerts to be issued pursuant to subsection (c).

(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL STATE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) REPORT.—The Inspector General of the Department of Health and Human Services (hereafter in this section referred to as the "Inspector General") shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Government health care programs.

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Government health care programs.

(b) INTERPRETIVE RULINGS.—

(1) IN GENERAL.—

(A) REQUEST FOR INTERPRETIVE RULING.—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General's current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B of the Social Security Act (hereafter in this section referred to as an "interpretive ruling").

(B) ISSUANCE AND EFFECT OF INTERPRETIVE RULING.—

(i) IN GENERAL.—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling in response to a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this provision shall be published in the Federal Register or otherwise made available for public inspection.

(ii) REASONS FOR DENIAL.—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision and shall identify the reasons for such decision.

(2) CRITERIA FOR INTERPRETIVE RULINGS.—

(A) IN GENERAL.—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling not authorized under this subsection.

(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on any factual issue, including the intent of the parties or the fair market value of particular leased space or equipment.

(c) SPECIAL FRAUD ALERTS.—

(1) IN GENERAL.—

(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) (hereafter in this subsection referred to as a "special fraud alert").

(B) ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall in consultation with the Attorney General, issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

SEC. ___04. REPORTING OF FRAUDULENT ACTIONS UNDER MEDICARE.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish a program through which individuals entitled to benefits under the medicare program may report to the Secretary on a confidential basis (at the individual's request) instances of suspected fraudulent actions arising under the program by providers of items and services under the program.

PART 2—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

SEC. ___11. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO FRAUD.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

"(3) FELONY CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Health Reform Act, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.".

(2) CONFORMING AMENDMENT.—Section 1128(b)(1) of such Act (42 U.S.C. 1320a–7(b)(1)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of the enactment of the Health Reform Act, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.".

(2) CONFORMING AMENDMENT.—Section 1128(b)(3) of such Act (42 U.S.C. 1320a–7(b)(3)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

SEC. ___12. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) of the Social Security Act (42 U.S.C. 1320a–7(c)(3)) is amended by adding at the end the following new subparagraphs:

"(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

"(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

"(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.".

SEC. ___13. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7(b)) is amended by adding at the end the following new paragraph:

"(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity—

"(A) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

"(B) against which a civil monetary penalty has been assessed under section 1128A; or

"(C) that has been excluded from participation under a program under title XVIII or under a State health care program.".

SEC. ___14. ACTIONS SUBJECT TO CRIMINAL PENALTIES.

(a) RESTRICTION ON APPLICATION OF EXCEPTION FOR AMOUNTS PAID TO EMPLOYEES.—Section 1128B(b)(3)(B) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(B)) is amended by striking "services;" and inserting the following: "services, but only if the amount of remuneration under the arrangement is (i) consistent with fair market value; (ii) not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals of patients directly contacted by the employee to the employer for the furnishing (or arranging for the furnishing) of such items or services; and (iii) provided pursuant to an arrangement that would be commercially reasonable even if no such referrals were made;".

(b) NEW EXCEPTION FOR CAPITATED PAYMENTS.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(F) any reduction in cost sharing or increased benefits given to an individual, any amounts paid to a provider for an item or service furnished to an individual, or any discount or reduction in price given by the provider for such an item or service, if the individual is enrolled with and such item or service is covered under any of the following:

"(i) A health plan which is furnishing items or services under a risk-sharing contract under section 1876 or section 1903(m).

"(ii) A health plan receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972;

"(G) any amounts paid to a provider for an item or service furnished to an individual or any discount or reduction in price given by the provider for such an item or service, if the individual is enrolled with and such item or service is covered under a health plan under which the provider furnishing the item or service is paid by the health plan for furnishing the item or service only on a capitated basis pursuant to a written arrangement between the plan and the provider in which the provider assumes financial risk for furnishing the item or service;

"(H) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all third party payors to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary; and

"(I) remuneration given to individuals to promote the delivery of preventive care in compliance with regulations promulgated by the Secretary.".

SEC. ___15. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c-5(b)(1)) is amended by striking "may prescribe)" and inserting "may prescribe, except that such period may not be less than 1 year)".

(2) CONFORMING AMENDMENT.—Section 1156(b)(2) of such Act (42 U.S.C. 1320c-5(b)(2)) is amended by striking "shall remain" and inserting "shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain".

(b) REPEAL OF "UNWILLING OR UNABLE" CONDITION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c-5(b)(1)) is amended—

(1) in the second sentence, by striking "and determines" and all that follows through "such obligations,"; and

(2) by striking the third sentence.

SEC. ___16. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) of the Social Security Act (42 U.S.C. 1395mm(i)(1)) is amended by striking "the Secretary may terminate" and all that follows and inserting the following: "in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

"(A) has failed substantially to carry out the contract;

"(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section; or

"(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).".

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

"(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

"(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

"(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

"(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.".

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

"(A) the Secretary provides the organization with the opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1);

"(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention;

"(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

"(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.".

(4) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) of such Act (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—

(1) REQUIREMENT FOR WRITTEN AGREEMENT.—Section 1876(i)(7)(A) of the Social Security Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking "an agreement" and inserting "a written agreement".

(2) DEVELOPMENT OF MODEL AGREEMENT.—Not later than July 1, 1995, the Secretary shall develop a model of the agreement that an eligible organization with a risk-sharing contract under section 1876 of the Social Security Act must enter into with an entity providing peer review services with respect to services provided by the organization under section 1876(i)(7)(A) of such Act.

(3) REPORT BY GAO.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study of the costs incurred by eligible organizations with risk-sharing contracts under section 1876(b) of such Act of complying with the requirement of entering into a written agreement with an entity providing peer review services with respect to services provided by the organization, together with an analysis of how information generated by such entities is used by the Secretary to assess the quality of services provided by such eligible organizations.

(B) REPORT TO CONGRESS.—Not later than July 1, 1997, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1995.

SEC. ___17. EFFECTIVE DATE.

The amendments made by this part shall take effect January 1, 1995.

PART 3—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. ___21. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) GENERAL PURPOSE.—Not later than January 1, 1995, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

(b) REPORTING OF INFORMATION.—

(1) IN GENERAL.—Each government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

(A) The name of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) TIMING AND FORM OF REPORTING.—The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information in this database. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including the agency designated by the Secretary in subsection (b)(5) shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) The term "final adverse action" includes:

(A) Civil judgments against a health care provider in Federal or State court related to the delivery of a health care item or service.

(B) Federal or State criminal convictions related to the delivery of a health care item or service.

(C) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(i) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(ii) any other loss of license of the provider, supplier, or practitioner, by operation of law, or

(iii) any other negative action or finding by such Federal or State agency that is publicly available information.

(D) Exclusion from participation in Federal or State health care programs.

(E) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(2) The terms "licensed health care practitioner", "licensed practitioner", and "practitioner" mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) The term "health care provider" means a provider of services as defined in section 1861(u) of the Social Security Act, and any entity, including a health maintenance organization, group medical practice, or any other entity listed by the Secretary in regulation, that provides health care services.

(4) The term "supplier" means a supplier of health care items and services described in section 1819(a) and (b), and section 1861 of the Social Security Act.

(5) The term "Government agency" shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Veterans' Administration.

(D) State law enforcement agencies.

(E) State medicaid fraud and abuse units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(6) The term "health plan" has the meaning given to such term by section 1128(i) of the Social Security Act.

(7) For purposes of paragraph (2), the existence of a conviction shall be determined under paragraph (4) of section 1128(j) of the Social Security Act.

(g) CONFORMING AMENDMENT.—Section 1921(d) of the Social Security Act is amended by inserting "and section ___21 of subtitle ___ of the _____ Appropriations Act of 1995" after "section 422 of the Health Care Quality Improvement Act of 1986".

PART 4—CIVIL MONETARY PENALTIES

SEC. ___31. CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended as follows:

(1) In subsection (a)(1), by inserting "or of any health plan (as defined in section 1128(i))," after "subsection (i)(1)),".

(2) In subsection (b)(1)(A), by inserting "or under a health plan" after "title XIX".

(3) In subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraphs:

"(3) With respect to amounts recovered arising out of a claim under a health plan, the portion of such amounts as is determined to have been paid by the plan shall be repaid to the plan, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by subtitle ___ of the _____ Appropriations Act of 1995 (as estimated by the Secretary) shall be deposited into the Health Care Fraud and Abuse Control Account established under section ___01(b) of such Act.".

(4) In subsection (i)—

(A) in paragraph (2), by inserting "or under a health plan" before the period at the end, and

(B) in paragraph (5), by inserting "or under a health plan" after "or XX".

(b) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking "or" at the end of paragraph (1)(D);

(B) by striking ", or" at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (3) and inserting "; or"; and

(D) by inserting after paragraph (3) the following new paragraph:

"(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128(h)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under title XVIII, or a State health care program;".

(2) REMUNERATION DEFINED.—Section 1128A(i) of such Act (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

"(6) The term 'remuneration' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term 'remuneration' does not include—

"(A) the waiver of coinsurance and deductible amounts by a person, if—

"(i) the waiver is not offered as part of any advertisement or solicitation;

"(ii) the person does not routinely waive coinsurance or deductible amounts; and

"(iii) the person—

"(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;

"(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or

"(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;

"(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all third party payors to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary; or

"(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations.".

(c) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)), as amended by subsection (b), is further amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the semicolon at the end of paragraph (4) and inserting "; or"; and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity that is participating in a program under title XVIII or a State health care program;".

(d) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)), as amended by subsections (b) and (c), is amended in the matter following paragraph (6)—

(1) by striking "$2,000" and inserting "$10,000";

(2) by inserting "; in cases under paragraph (4), $10,000 for each such offer or transfer; in cases under paragraph (5), $10,000 for each day the prohibited relationship occurs; in cases under paragraph (6) or (7), $10,000 per violation" after "false or misleading information was given";

(3) by striking "twice the amount" and inserting "3 times the amount"; and

(4) by inserting "(or, in cases under paragraph (4), 3 times the amount of the illegal remuneration)" after "for each such item or service".

(e) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (A) by striking "claimed," and inserting the following: "claimed, including any person who repeatedly presents or causes to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,";

(2) in subparagraph (C), by striking "or" at the end;

(3) in subparagraph (D), by striking "; or" and inserting ", or"; and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) is for a medical or other item or service that a person repeatedly knows or should know is not medically necessary; or".

(f) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended by adding the following new paragraph:

"(3) Any person (including any organization, agency, or other entity, but excluding a beneficiary as defined in subsection (i)(5)) who the Secretary determines has violated section 1128B(b) of this title shall be subject to a civil monetary penalty of not more than $10,000 for each such violation. In addition, such person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b). The total amount of remuneration subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one proscribed by section 1128B(b).".

(g) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.—Section 1156(b)(3) of the Social Security Act (42 U.S.C. 1320c–5(b)(3)) is amended by striking "the actual or estimated cost" and inserting the following: "up to $10,000 for each instance".

(h) PROCEDURAL PROVISIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is further amended by adding at the end the following new subparagraph:

"(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) or (B) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1995.

PART 5—AMENDMENTS TO CRIMINAL LAW

SEC. ___41. HEALTH CARE FRAUD.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1347. Health care fraud

"(a) Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person shall be imprisoned for any term of years.

"(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 1128(i) of the Social Security Act.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1347. Health care fraud.".

(b) CRIMINAL FINES DEPOSITED IN THE HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section ___01(b) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).

SEC. ___42. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that—

"(i) is used in the commission of the offense if the offense results in a financial loss or gain of $50,000 or more; or

"(ii) constitutes or is derived from proceeds traceable to the commission of the offense.

"(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

"(i) section 1347 of this title;

"(ii) section 1128B of the Social Security Act;

"(iii) sections 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title if the violation or conspiracy relates to health care fraud; and

"(iv) section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to health care fraud.".

(b) PROPERTY FORFEITED DEPOSITED IN HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section ___01(b) an amount equal to amounts resulting from forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

SEC. ___43. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by inserting "or" at the end of subparagraph (B); and

(3) by adding at the end the following:

"(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);".

PART 6—PAYMENTS FOR STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. ___51. ESTABLISHMENT OF STATE FRAUD UNITS.

(a) ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL UNIT.—The Governor of each State shall, consistent with State law, establish and maintain in accordance with subsection (b) a State agency to act as a Health Care Fraud and Abuse Control Unit for purposes of this part.

(b) DEFINITION.—In this section, a "State Fraud Unit" means a Health Care Fraud and Abuse Control Unit designated under subsection (a) that the Secretary certifies meets the requirements of this part.

SEC. ___52. REQUIREMENTS FOR STATE FRAUD UNITS.

(a) IN GENERAL.—The State Fraud Unit must—

(1) be a single identifiable entity of the State government;

(2) be separate and distinct from any State agency with principal responsibility for the administration of any Federally-funded or mandated health care program;

(3) meet the other requirements of this section.

(b) SPECIFIC REQUIREMENTS DESCRIBED.—The State Fraud Unit shall—

(1) be a Unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

(2) if it is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, (A) assure its referral of suspected criminal violations to the appropriate authority or authorities in the State for prosecution, and (B) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

(3) have a formal working relationship with the office of the State Attorney General or the appropriate authority or authorities for prosecution and have formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the Fraud Unit and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to any Federally-funded or mandated health care programs.

(c) STAFFING REQUIREMENTS.—The State Fraud Unit shall—

(1) employ attorneys, auditors, investigators and other necessary personnel; and

(2) be organized in such a manner and provide sufficient resources as is necessary to promote the effective and efficient conduct of State Fraud Unit activities.

(d) COOPERATIVE AGREEMENTS; MEMORANDA OF UNDERSTANDING.—The State Fraud Unit shall have cooperative agreements with—

(1) Federally-funded or mandated health care programs;

(2) similar Fraud Units in other States, as exemplified through membership and participation in the National Association of Medicaid Fraud Control Units or its successor; and

(3) the Secretary.

(e) REPORTS.—The State Fraud Unit shall submit to the Secretary an application and

an annual report containing such information as the Secretary determines to be necessary to determine whether the State Fraud Unit meets the requirements of this section.

(f) FUNDING SOURCE; PARTICIPATION IN ALL-PAYER PROGRAM.—In addition to those sums expended by a State under section ___54(a) for purposes of determining the amount of the Secretary's payments, a State Fraud Unit may receive funding for its activities from other sources, the identity of which shall be reported to the Secretary in its application or annual report. The State Fraud Unit shall participate in the all-payer fraud and abuse control program established under section ___01.

SEC. ___53. SCOPE AND PURPOSE.

The State Fraud Unit shall carry out the following activities:

(1) The State Fraud Unit shall conduct a statewide program for the investigation and prosecution (or referring for prosecution) of violations of all applicable state laws regarding any and all aspects of fraud in connection with any aspect of the administration and provision of health care services and activities of providers of such services under any Federally-funded or mandated health care programs;

(2) The State Fraud Unit shall have procedures for reviewing complaints of the abuse or neglect of patients of facilities (including patients in residential facilities and home health care programs) that receive payments under any Federally-funded or mandated health care programs, and, where appropriate, to investigate and prosecute such complaints under the criminal laws of the State or for referring the complaints to other State agencies for action.

(3) The State Fraud Unit shall provide for the collection, or referral for collection to the appropriate agency, of overpayments that are made under any Federally-funded or mandated health care program and that are discovered by the State Fraud Unit in carrying out its activities.

SEC. ___54. PAYMENTS TO STATES.

(a) MATCHING PAYMENTS TO STATES.—Subject to subsection (c), for each year for which a State has a State Fraud Unit approved under section ___52(b) in operation the Secretary shall provide for a payment to the State for each quarter in a fiscal year in an amount equal to the applicable percentage of the sums expended during the quarter by the State Fraud Unit.

(b) APPLICABLE PERCENTAGE DEFINED.—

(1) IN GENERAL.—In subsection (a), the "applicable percentage" with respect to a State for a fiscal year is—

(A) 90 percent, for quarters occurring during the first 3 years for which the State Fraud Unit is in operation; or

(B) 75 percent, for any other quarters.

(2) TREATMENT OF STATES WITH MEDICAID FRAUD CONTROL UNITS.—In the case of a State with a State medicaid fraud control in operation prior to or as of the date of the enactment of this Act, in determining the number of years for which the State Fraud Unit under this part has been in operation, there shall be included the number of years for which such State medicaid fraud control unit was in operation.

(c) LIMIT ON PAYMENT.—Notwithstanding subsection (a), the total amount of payments made to a State under this section for a fiscal year may not exceed the amounts as authorized pursuant to section 1903(b)(3) of the Social Security Act. This section is effective one day after the date of enactment.

OLD FAITHFUL PROTECTION ACT OF 1994

BAUCUS (AND BURNS) AMENDMENT NO. 2600

(Ordered to lie on the table.)

Mr. BAUCUS (for himself and Mr. BURNS) submitted an amendment intended to be proposed by them to the bill (H.R. 1137) to amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1027), and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—OLD FAITHFUL PROTECTION ACT

SECTION 101. SHORT TITLE.

This Title may be cited as the "Old Faithful Protection Act of 1993".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Yellowstone National Park is a unique and irreplaceable national and international treasure and part of one of the few remaining undisturbed hydrothermal systems in the world;

(2) there is a risk that unrestricted hydrothermal or geothermal resource development adjacent to Yellowstone National Park in the States of Montana, Wyoming, and Idaho will interfere with or adversely affect the hydrothermal and geothermal features of such Park or the management of relevant mineral resources;

(3) further research is needed to understand the characteristics of the thermal systems and features and the effects of development on such systems and features on lands outside of Yellowstone National Park but within the Yellowstone Protection Area, as such area is defined in this Title;

(4) preservation and protection of the thermal system associated with and the features within Yellowstone National Park is a benefit to the people of the United States and the world;

(5) cooperation between the United States and the States of Montana, Idaho, and Wyoming to protect and preserve Yellowstone National Park is desirable; and

(6) as a settlement of litigation concerning water rights, including the reserved water rights of the United States associated with units of the National Park System in Montana, the Department of the Interior and the Department of Justice, on behalf of the United States, and a Compact Commission, on behalf of the State of Montana, have developed a Compact that constitutes such a settlement of litigation concerning matters within its scope and which, in Article IV, establishes a program for regulation of development and use of groundwater in areas adjacent to Yellowstone National Park.

(b) PURPOSES.—The purposes of this Title are—

(1) to require the Secretary to take the necessary actions to preserve and protect the thermal systems and features of Yellowstone National Park;

(2) to provide a framework for management by the States of Montana, Wyoming, and Idaho of regulated resources within the Yellowstone Protection Area outside of but directly related to Yellowstone National Park to preserve and protect the thermal systems and features of Yellowstone National Park;

(3) to authorize, as provided in section 8, approval of Article IV of the Compact as an appropriate State program;

(4) to require relevant research; and

(5) to authorize to be appropriated, as provided in section 112, necessary sums.

SEC. 103. DEFINITIONS.

For purposes of this Title:

(1) The term "Secretary" means the Secretary of the Interior except as otherwise provided.

(2) The term "Yellowstone Protection Area" means the area in Montana, Idaho, and Wyoming identified on the map entitled "Yellowstone Protection Area", numbered 20036A, and dated July 1994, and any modifications thereof as may be made under section 7.

(3) The term "thermal systems and features" means the hydrothermal and geothermal systems and features of Yellowstone National Park associated with the regulated resources within the Yellowstone Protection Area.

(4) The term "regulated resources" means—

(A) geothermal steam and associated geothermal resources, as defined in section 2(c) of the Geothermal Steam Act of 1970 (30 U.S.C. 1001(c)); or

(B) groundwater with a temperature in excess of 59 degrees Fahrenheit.

(5) The term "well" means a well or facility producing or intended to produce regulated resources but excludes facilities that would do no more than utilize the natural unenhanced surface flow of a natural spring.

(6) The term "approved State program" means a program of Montana, Idaho, or Wyoming that has been submitted to the Secretary and has been approved pursuant to this Title.

(7) The term "Compact" means the water rights compact entered into by the United States and the State of Montana on January 31, 1994.

(8) Except as otherwise provided in this title, terms used in this title shall have the same meaning as in the Geothermal Steam Act of 1970.

SEC. 104. RESTRICTION ON FEDERAL LANDS.

(a) The Congress hereby declares that—

(1) Yellowstone National Park possesses numerous thermal features, including Old Faithful geyser and approximately 10,000 other geysers and hot springs, and is hereby designated as a significant thermal feature unto itself; and

(2) Federal legislation is desirable to preserve and protect these features.

(b) The Congress hereby declares that any use of, or production from, any existing well, or any exploration for, or development of, any new well within the boundary of the Yellowstone Protection Area, as defined in section 103(2) of the Old Faithful Protection Act of 1994, risks adverse effects on the thermal features of Yellowstone National Park.

(c) Notwithstanding any other provision of law, the Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act (30 U.S.C. 1001 and following) for lands within the boundary of the Yellowstone Protection Area. Nothing in this section shall be construed to apply to any lands not owned by the United States.

SEC. 105 MORATORIUM OF LANDS WITHIN THE YELLOWSTONE PROTECTION AREA.

(a) PROHIBITION.—Except as provided by sections 107 and 108 of this title, there shall be no use (except for monitoring by the Secretary or monitoring under an approved State program) of, or production from, any existing well and no exploration for, or development of, any new well within the Yellowstone Protection Area.

(b) MANAGEMENT.—The Secretary shall review National Park Service management of

Yellowstone National Park and shall take such steps as may be necessary to protect and preserve the thermal systems and features of such National Park.

SEC. 106. RESEARCH.

(a) IN GENERAL.—The National Park Service, in consultation with the Forest Service, the United States Geological Survey, and each State agency implementing an approved State program, shall research the characteristics of the thermal systems and features within the Yellowstone Protection Area, inventory and research the existing and potential effects (including cumulative effects) of hydrothermal or geothermal development on such systems and features, and periodically, but not less than once every five years, inform Congress concerning the results of such inventory and research.

(b) UNDER STATE PROGRAM.—If an approved State program provides for research described in subsection (a), both the Secretary and the relevant State may conduct such research within the Yellowstone Protection Area.

(c) NONINTRUSIVE METHODOLOGIES.—Except for research within a National Park System unit within the Yellowstone Protection Area approved by the Secretary or elsewhere under a permit issued by a State agency implementing an approved State program, research pursuant to this section shall exclusively use nonintrusive methodologies.

LIMITATION.—Nothing in this Title shall be construed as authorizing any activities within any unit of the National Park System in the Yellowstone Protection Area inconsistent with laws or policies applicable to the relevant unit.

SEC. 107. STATE MANAGEMENT PROGRAMS.

(a) DEVELOPMENT.—The States of Montana, Wyoming, and Idaho are encouraged to develop and maintain State programs for the management of regulated resources outside of Yellowstone National Park to preserve and protect the thermal systems and features of Yellowstone National Park.

(b) PERMIT.—Except as provided for in section 6, as of the date of enactment of this Title, no person shall engage in any use (including research), production, exploration, or development of any regulated resources on non-Federal lands within the Yellowstone Protection Area except to the extent authorized by a permit issued by a State agency implementing an approved State program.

(c) STATE AUTHORITY.—(1) In the implementation of an approved State program, a State may exercise the authority to grant permits under subsection (b) for the use (including research), production, exploration, or development of any regulated resources within the Yellowstone Protection Area.

(2) Notwithstanding any other provision of law, no permit within the Yellowstone Protection Area for regulated resources issued prior to the date of enactment of this Title shall be deemed to have been issued in the implementation of approved State program: *Provided, however*, that permits issued by the State of Montana after January 31, 1994, shall be deemed to have been issued in the implementation of an approved State program.

(3)(A) The Secretary shall monitor the implementation of an approved State program (including the State's enforcement thereof) to assure consistency with the requirements of this Title.

(B) The Secretary may suspend implementation of an approved State program if such implementation (including the State's enforcement thereof) is not being exercised in a manner consistent with this Title. During any such suspension, no permit granted under such program shall be effective except to the extent the Secretary determines that the permitted activities would be consistent with the purposes of this Title.

(C) If an approved State program includes procedures for the exercise of the Secretary's authority to suspend such a program's implementation, the Secretary shall follow such procedures. If no such procedures are included in a State program, the Secretary shall provide notice and a reasonable time to comply with this Title.

(d) APPROVAL BY THE SECRETARY.—(1) The Secretary shall approve a program submitted by a State if the Secretary determines that such program, when implemented, will fulfill the purposes of this Title regarding the protection of the thermal systems and features of Yellowstone National Park.

(2) The Secretary shall not approve any State program submitted under this section until the Secretary—

(A) solicited, publicly disclosed, and considered the views of the heads of other State and Federal agencies the Secretary determines are concerned with the proposed State program;

(B) solicited, publicly disclosed, and considered the views of the public; and

(C) found that the State has the necessary legal authority and personnel for the regulation and management of regulated resources outside Yellowstone National Park consistent with the requirements of this Title.

(3)(A) The Secretary may approve or disapprove a program in whole or in part.

(B) If the Secretary disapproves any proposed State program, in whole or in part, the Secretary shall notify the State in writing of the decision and set forth in detail the reasons therefor. The State may submit a revised State program or portion thereof.

(4) The Secretary shall not approve any State program that does not, at a minimum—

(A) include ongoing scientific review of restrictions, boundaries, and permits applicable to the development of a regulated resource;

(B) requires that, in conducting the scientific review referred to in subparagraph (A) and in implementing the State program, any doubt shall be resolved in favor of protection of the thermal systems and features of Yellowstone National Park; and

(C) allow the State agency authorized to administer the program to reject recommendations based on the scientific review referred to in subparagraph (A), to the extent such rejection is necessary to protect and preserve the thermal systems and features of Yellowstone National Park.

(e) SCOPE.—Except to the extent an approved State program is being implemented by a State, section 105(a) of this Title shall apply to the Yellowstone Protection Area.

(f) MODIFICATION OF YELLOWSTONE PROTECTION AREA.—(1) The boundaries of the Yellowstone Protection Area in a State may be modified pursuant to an approved State program if such modification is approved by the Secretary.

(2) The Secretary shall not approve any such modification that the Secretary finds would not be consistent with the purposes of this Title.

(3) The Secretary shall revise the map of the Yellowstone Protection Area to reflect any approved boundary modifications.

(4) If an approved State program includes procedures for the exercise of the Secretary's authority to approve modifications of the boundaries of the Yellowstone Protection Area, the Secretary shall follow such procedures.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into cooperative agreements with the States of Montana, Idaho, and Wyoming and with the Secretary of Agriculture to fulfill the purposes of his Title.

(h) FEDERAL FINANCIAL ASSISTANCE.—(1) Subject to appropriation, the Secretary may provide financial assistance for the implementation of an approved State program. In providing such assistance, the Secretary may enter into appropriate funding agreements, including grants and cooperative agreements, with a State agency or agencies, upon such terms and conditions as the Secretary deems appropriate.

(2) A recipient State may invest funds provided under this subsection so long as such funds, together with interest and any other earnings thereon, shall be available for use by the State only under the terms and conditions of the approved State program and an agreement entered into with the Secretary under this subsection and shall not be used by the State for any other purpose.

SEC. 108. MONTANA PROGRAM.

(a) APPROVAL.—(1) The Congress finds that Article IV of the Compact fulfills the purposes of this Title regarding the protection of the thermal systems and features of Yellowstone National Park.

(2) All provisions of section 107 are applicable to this section, except for purposes of section 107(d)(1) the Compact shall be deemed to have been submitted to the Secretary, and, notwithstanding sections 107(d)(2), 107(d)(3), and 107(d)(4), Article IV thereof shall be considered an approved State program for regulation of groundwater resources within the Montana portion of the Yellowstone Protection Area. Article IV of the Compact shall not be considered an approved State program for the management of regulated resources within the Montana portion of the Yellowstone protection area other than groundwater resources.

(b) SCOPE.—Nothing in this Title shall be construed as amending the Compact or as altering its status in relationship to any litigation with regard to water rights.

(c) REVIEW PROCEDURES.—For purposes of sections 107(c)(3)(B), 107(c)(3)(C), 107(f)(1), and 107(f)(2), the provisions of the Compact with respect to—

(1) review of administrative decisions under Article IV of the Compact;

(2) enforcement of the Compact;

(3) the discretion of any party to the Compact to withdraw therefrom; and

(4) modification of boundaries and restrictions within the Controlled Groundwater Area, shall be deemed to be procedures for the exercise of the Secretary's authority to approve modifications of the boundaries of the Yellowstone Protection Area or to suspend the implementation of an approved State program.

SEC. 109. IDAHO AND WYOMING PROGRAMS.

(a) Section 104, subsection 105(a), subsection 107(b), and paragraph 107(c)(2) shall not be effective with respect to the Yellowstone Protection Area within the State of Idaho and the State of Wyoming for two years after the date of enactment of this Title if the Governor of the State notifies the Secretary that the State will prohibit any permit action or other approval action involving regulated resources within the Yellowstone Protection Area during such two year period.

(b)(1) The State of Wyoming or the State of Idaho may, within the two year period provided for in subsection (a), submit a state program to the Secretary for approval.

(2) Upon receipt of a state program within the two year period provided for in subsection (a), the Secretary shall review such program pursuant to section 107.

(c) Section 104, subsections 105(a), 107(b), and paragraph 107(c)(2) shall become effective with respect to the Yellowstone Protection Area within the State of Idaho or the State of Wyoming:

(1) upon the approval or disapproval of the respective State program;

(2) at the end of the two year period provided for in subsection (a); or

(3) if the State takes any permit action or other approval action contrary to the notification provided to the Secretary pursuant to subsection (a).

SEC. 110. JUDICIAL REVIEW.

(a) ADMINISTRATIVE PROCEDURES.—Except as provided in this section, any Federal agency action or failure to act to implement or enforce this Title shall be subject to judicial review in accordance with and to the extent provided by chapter 7 of title 5, United States Code.

(b) REMEDY.—The sole remedy available to any person claiming deprivation of a vested property right by enactment of this Title or Federal action pursuant to this Title shall be an action for monetary damages, filed pursuant to sections 1491 or 1505 of title 28, United States Code, in the Court of Federal Claims. Any just compensation awards determined by the Court of Federal Claims to be due to a claimant, shall be paid consistent with section 2517 of such title.

SEC. 111. REGULATIONS.

No later than two years after the date of enactment of this Title, the Secretary shall promulgate such rules and regulations as are necessary to implement this Title.

SEC. 112. AUTHORIZATION APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Title.

SEC. 113. SCOPE OF TITLE.

Nothing in this Title shall be construed as increasing or diminishing any rights of the United States with respect to water, or as affecting any previous adjudication of or any agreement concerning any such rights.

SEC. 114. LAND EXCHANGE.

(a) GENERAL.—Notwithstanding any other provision of law and subject to the provisions of this title, the Secretary of Agriculture shall acquire by exchange certain lands and interests in lands owned by the Church Universal and Triumphant, its successors and assigns, (referred to in this title as "the Church"), located in the Yellowstone Controlled Groundwater Area and Corwin Springs Known Geothermal Resource Area of the Gallatin National Forest.

(b) OFFER AND ACCEPTANCE OF LAND AND INTEREST IN LAND.—

(1) NON-FEDERAL LANDS AND INTERESTS.—If the Church offers:

(i) title that is acceptable to the United States to all rights, title, and interests to approximately 26 acres of land owned by the Church as depicted on the maps entitled "Church/Forest Service Land Exchange Proposal", dated July 1994;

(ii) all right, title and interest to the subsurface regulated resources estate on all Church properties within the Yellowstone Controlled Groundwater Area;

(iii) a perpetual public access road and utility easement of 60 feet in width, plus allowance for cuts and fills, over Church property to the Gallatin National Forest lands in the Cutler Homestead/Sentinel Butte area, as depicted on the maps referenced in paragraph (b)(1)(i); and

(iv) other rights and covenants in accordance with the terms of the "Church/Forest Service Land Exchange Specifications" document prepared pursuant to paragraph (b)(3); the Secretary of Agriculture shall accept a warranty deed to the land specified in paragraph (b)(1)(i), a special warranty deed to the regulated resources specified in paragraph (b)(1)(ii), State water rights transfer documents, and any other such instruments as may be necessary to transfer the above referenced property interests.

(2) FEDERAL LAND AND INTERESTS.—

(A) GENERAL.—Upon acceptance by the Secretary of Agriculture of title to the lands, interests, and rights and covenants offered by the Church pursuant to paragraph (b)(1):

(i) the Secretary, upon request by the Secretary of Agriculture, shall convey by patent to the Church, subject to all valid existing rights, and a reservation to the United States of all regulated resources, title to approximately 11 acres within the Gallatin National Forest, as depicted on the map referenced in paragraph (b)(3);

(ii) the Secretary of Agriculture shall convey an easement to the Church granting the right to collect and transport across Federal lands the natural unenhanced surface flow at LaDuke Hot Springs from its source to the east bank of the Yellowstone River as depicted on the maps referenced in paragraph (b)(1), and the United States shall withdraw all of its water rights claims and objections filed with regard to LaDuke Hot Springs in pending water rights adjudications under Federal and State law;

(iii) the Secretary shall grant to the Church standard Forest Service rights-of-way authorizations for existing roads across National Forest System land as generally depicted on the maps referenced in paragraph (b)(1) and further defined by the document referenced in paragraph (b)(1)(i); and

(iv) the Secretary shall grant to the Church other rights and covenants in accordance with the terms of the "Church/Forest Service Land Exchange Specifications" document pursuant to paragraph (b)(3).

(B) SURVEYS.—Surveys prepared to standards approved by the Secretary shall be furnished by the Church for the affected Federal and non-Federal lands and surface interests prior to conveyance of the Federal lands and interests in this exchange.

(3) AGREEMENT.—The document entitled "Church/Forest Service Land Exchange Specifications," jointly developed and agreed to by both parties, shall define the non-Federal and Federal lands and interests involved in this exchange, including legal descriptions of lands and interests, and other terms, conditions, and covenants, but shall not include any minimum surface flow requirements to the Yellowstone River from LaDuke Hot Springs. Such document, upon completion, shall be transmitted to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives and shall not take effect until 60 days after receipt by both Committees.

(c) TITLE.—

(1) REVIEW OF TITLE.—Within ninety days of receipt of the approved surveys and title documents from the Church, the Secretary shall review the title for the non-Federal lands described in paragraph (b) and determined whether—

(A) the applicable title standards for Federal land acquisition have been satisfied subject to any variances expressly contained in this title; and

(B) all draft conveyances and closing documents have been received and approved.

(2) CONVEYANCE OF TITLE.—In the event the quality of title does not meet Federal standards or is otherwise unacceptable to the Secretary, the Secretary shall advise the Church regarding corrective actions necessary to cure title defects. The conveyance of lands to the Church described in paragraph (b)(2)(A) shall be completed not later than ninety days after the Secretary has approved title.

SEC. 15. GENERAL PROVISIONS.

(a) MAPS AND DOCUMENTS.—The maps referred to in section 14 are subject to corrections for any technical errors in describing the properties. The maps and documents described in section 14(b)(1) and (3) shall be on file and available for public inspection in the Office of the Chief of the Forest Service, in Washington, D.C.

(b) NATIONAL FOREST SYSTEM LANDS.—All lands and interests in lands conveyed to the United States under this Title shall be administered in accordance with the laws and regulations pertaining to the National Forest System.

(c) VALUATION.—The value of the lands and interests in lands to be exchanged under this Title and described in section 14(b) are deemed to be equal, and therefore, no appraisals shall be required.

TITLE II.—LOST CREEK LAND EXCHANGE.

SEC. 201. SHORT TITLE.

This title may be cited as the "Lost Creek Land Exchange Act of 1994".

SEC. 202. LAND EXCHANGE.

(a) GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture (hereinafter referred to in this title as the "Secretary") is authorized and directed to acquire by exchange certain lands and interests in lands owned by the Brand S Corporation, its successors and assigns, (hereinafter referred to in this title as the "Corporation"), located in the Lost Creek area of the Deerlodge National Forest and within the Gallatin National Forest.

(b) OFFER AND ACCEPTANCE OF LAND.—

(1) NON-FEDERAL LAND.—If the Corporation offers to convey to the United States fee title that is acceptable to the United States to approximately 18,300 acres of land owned by the corporation and available for exchange, as depicted on the maps entitled "Brand S/Forest Service Land Exchange Proposal," numbered 1 through 3, dated March 1994, and described in the "Land Exchange Specifications" document pursuant to paragraph (b)(3), the Secretary shall accept a warranty deed to such lands.

(2) FEDERAL LAND.—Upon acceptance by the Secretary of title to the Corporation's lands pursuant to paragraph (b)(1) and upon the effective date of the document referred to in paragraph (b)(3), and subject to valid existing rights, the Secretary of the Interior shall convey, by patent, the fee title to approximately 10,800 acres on the Deerlodge and Gallatin National Forests, and by timber deed, the right to harvest approximately 3.5 million board feet of timber on certain Deerlodge National Forest lands, as depicted on the maps referenced in paragraph (b)(1) and further defined by the document reference in paragraph (b)(3): Provided, That, except for the east ½ of sec. 10, T3S, R8E, the Secretary shall not convey to the Corporation the lands on the Gallatin National Forest identified as the "Wineglass Tract" on the map entitled "Wineglass Tract," dated September 1994, unless the Secretary finds that measures are in place to protect the

scenic, wildlife, and open space values of the Wineglass Tract. Such finding shall be contained in the document referenced in paragraph (b)(3)

(3) AGREEMENT.—A document entitled "Brand S/Forest Service Land Exchange Specifications," shall be jointly developed and agreed to by the Corporation and the Secretary. Such document shall define the non-Federal and Federal lands to be exchanged, and shall include legal descriptions of such lands and interests therein, along with any other agreements. Such document shall be transmitted, upon completion, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives and shall not take effect until 60 days after transmittal to both Committees.

(4) CONFLICT.—In case of conflict between the maps referenced in paragraph (b)(1) and the document referenced in paragraph (b)(3), the maps shall govern.

(c) TITLE.—

(1) REVIEW OF TITLE.—Within sixty days of receipt of title documents from the Corporation, the Secretary shall review the title for the non-Federal lands described in paragraph (b) and determine whether—

(A) applicable title standards for Federal land acquisition have been satisfied or the quality of title is otherwise acceptable to the Secretary;

(B) all draft conveyances and closing documents have been received and approved;

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary; and

(D) the Corporation has complied with the conditions imposed by this title.

(2) CONVEYANCE OF TITLE.—In the event the title does not meet Federal standards or is otherwise unacceptable to the Secretary, the Secretary shall advise the Corporation regarding corrective actions necessary to make an affirmative determination. The Secretary, acting through the Secretary of the Interior, shall effect the conveyance of lands described in paragraph (b)(2) not later than ninety days after the Secretary has made an affirmative determination.

(d) RESOLUTION OF PUBLIC ACCESS.—The Secretary is directed, in accordance with existing law, to improve legal public access to Gallatin National Forest System lands between West Pine Creek and Big Creek.

SEC. 203. GENERAL PROVISIONS

(a) MAPS AND DOCUMENTS.—The maps referred to in section 202(b)(1) shall be subject to such minor corrections as may be agreed upon by the Secretary and the Corporation. The maps and document described in section 202(b) (1) and (3) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

(b) NATIONAL FOREST SYSTEM LANDS.—

(1) IN GENERAL.—All lands conveyed to the United States under this title shall be added to and administered as part of the Deerlodge or Gallatin National Forests, as appropriate, and shall be administered by the Secretary in accordance with the laws and regulations pertaining to the National Forest System.

(2) WILDERNESS STUDY AREA ACQUISITIONS.—Until Congress determines otherwise, lands acquired within the Hyalite-Porcupine-Buffalo Horn Wilderness Study Area pursuant to this Title shall be managed by the Secretary of Agriculture and the Secretary of the Interior, as appropriate, so as to maintain the presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

(c) VALUATION.—The values of the lands and interests in lands to be exchanged under this title and described in section 202(b) are deemed to be of approximately equal value.

(d) LIABILITY FOR HAZARDOUS SUBSTANCES.—

(1) The Secretary shall not acquire any lands under this title if the Secretary determines that such lands, or any portion thereof, have become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601)).

(2) Notwithstanding any other provision of law, the United States shall have no responsibility or liability with respect to any hazardous wastes or other substances placed on any of the lands covered by this title after their transfer to the ownership of another party, but nothing in this title shall be construed as either diminishing or increasing any responsibility or liability of the United States based on the condition of such lands on the date of their transfer to the ownership of another party.

PROPOSED REPORT LANGUAGE

H.R. 1137—The Old Faithful Protection Act

The Forest Service is encouraged to expedite land exchanges with the Idaho Department of Lands within the Yellowstone Protection Area in order to consolidate land ownerships.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, September 29, 1994, at 10:30 a.m., in SR-332, to consider the nomination of Marsha P. Martin, of Texas, to be a member of the Farm Credit Administration Board.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2:00 p.m. on Thursday, September 29, 1994, in open session, to consider the following pending military nominations: Gen. Ronald R. Fogleman, USAF for reappointment to the grade of General and to be Chief of Staff, U.S. Air Force; Lt. Gen. John J. Sheehan, USMC for appointment to the grade of General and to be Commander in Chief, U.S. Atlantic Command; Gen. Robert L. Rutherford, USAF for reappointment to the grade General and to be Commander in Chief, U.S. Transportation Command and Commander, Air Mobility Command; and Lt. Gen. Daniel W. Christman, USA for reappointment to the grade of Lieutenant General and to be assistant to the Chairman of the Joint Chiefs of Staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., August 29, 1994, to receive testimony on the agreement for cooperation on peaceful uses of atomic energy between the United States and the European Atomic Energy Community [Euratom].

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today, September 29, 1994 at 10:00 a.m., to consider legislation to approve and implement the Uruguay round of multilateral trade negotiations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, September 29, 1994 at 1:00 p.m. to hold a hearing on implementation of the Violence Against Women Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. KOHL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, September 29, 1994 at 10:00 a.m. to a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. KOHL. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate on Thursday, September 29, 1994, at 9:30 a.m. to hold a hearing titled "Uninsured Bank Products: Risky Business for Seniors?" to examine the sale of uninsured bank products to older Americans.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN WATER, FISHERIES AND WILDLIFE

Mr. KOHL. Mr. President, I ask unanimous consent that the Subcommittee on Clean Water, Fisheries and Wildlife, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, September 29, beginning at 9:30 a.m., to conduct a hearing on the reauthorization of the Endangered Species Act focusing on conservation on public lands.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORCE REQUIREMENTS AND PERSONNEL

Mr. KOHL. Mr. President, I ask unanimous consent that the Subcommittee on Force Requirements and Personnel of the Committee on Armed Services

be authorized to meet at 9:30 a.m. on Thursday, September 29, 1994, in open session, to receive testimony on the Department of Defense response to the Persian Gulf illness.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POLISH ARMED FORCES CONTRIBUTIONS IN WORLD WAR II

• Mr. LAUTENBERG. Mr. President, today I am submitting for the RECORD a study entitled "Polish Armed Forces Contributions to Allied Victory in World War II." The study was prepared for the New Jersey Polish-American Congress and is an overview of Polish military and paramilitary activities dating from the Nazi invasion of Poland on September 1, 1939, to the surrender of Nazi forces nearly 6 years later, on May 8, 1945.

The study's author is retired Rear Adm. Sigmund Bajak, USNR. A member of the Polish-American Congress, Admiral Bajak is a veteran of World War II, Korea, and Vietnam. He is currently completing a doctorate in Polish military history at the University of Warsaw.

I hope my colleagues find this study informative.

I ask that the full text of my statement, as well as the accompanying study appear in the RECORD.

The study follows:

POLISH ARMED FORCES CONTRIBUTIONS TO ALLIED VICTORY IN WORLD WAR II

(By Sigmund Bajak)

Introduction: On May 8, 1945, when United States Army General Carl Spaatz, together with his Allied military colleagues, accepted the unconditional surrender of Germany in the Berlin suburb of Karlhorst the Polish Armed Forces numbered about 600,000. Of this total, 180,000 Polish soldiers were part of the 400,000-strong Soviet Army which conquered Berlin. The remainder of the Polish Forces served throughout the western front with the Allies.

In addition to regular Polish Forces, hundreds of thousands of Poles fought in the Polish underground armies in Poland as well as in the occupied countries of Europe. In Poland itself there were four different underground armies numbering about 500,000 partisans of both sexes and all ages. They were: the Home Army, Peasant Battalions, the Peoples Army and the National Armed Forces.

Son of Poland Pope John Paul II, on the 10th anniversary of his pontificate, said, "In World War II, on every front, Poles shed their blood for independence. Polish independence cannot be measured in geopolitical terms, but only according to authentic criteria of national sovereignty in its own nation."

It is necessary to elaborate on the participation of Poles in World War II, if only in the briefest terms, to truly understand Polish contributions to allied victory. What follows is a partial review of the efforts of Poles, in and out of uniform, as they fought from 1939 to 1945 for their independence and for the Allied cause.

POLAND—SEPTEMBER 1939

Westerplatte (Located in the Baltic Port of Gdańsk—a Free City): At 4 AM on September 1, 1939 the German battleship *Schleswig-Holstein* opened fire on the small Polish military transit depot, at Westerplatte. Major Henryk Sucharski, and his force of about 170 men held their ground for 7 days against overwhelming numbers of German ground troops before being forced to surrender. General Eberhadt, Commander of the German forces in Gdańsk, refused to accept the Major's sword because of the uncommon bravery shown by the Polish garrison. The sword was later taken away from the Major at a German prison camp.

Bzura River Counteroffensive (The Bzura River lies on a path Leczyca-Lowicz-Sochaczew, and joins the Vistula at Wyszogrod): On the evening of September 9, 1939, General Tadeusz Kutrzeba and his Polish Army of Poznan, located in northwest Poland, attacked the 4th, 8th and 10th German armies as they progressed eastward toward Warsaw. Kutrzeba was successful in delaying the Germans for two days before the Wermacht overwhelmed his forces. Kutrzeba's effort gave the Polish Warsaw and Lublin Armies time for reorganization after the initial German offensive.

The Hel Peninsula (Located between the Bay of Gdańsk and the Baltic Sea): Polish Admiral Józef Unrug, a Pole of German heritage, did not surrender his command, located on the Hel peninsula, until October 2, 1939 four days after Warsaw was forced to capitulate. Before doing so he gave his staff permission to attempt escape by sea to Sweden. During the surrender a German trawler was sunk by one of the Admiral's mines. It's reported that the Admiral always insisted on a translator in the Germany prison camp because he said he was a Pole.

Defense of Poland: The defense of Warsaw began on September 8, 1939. On the 17th of September the Red Army crossed the eastern borders of Poland and began its march toward Warsaw. Warsaw capitulated on September 28, 1939. German losses were about 45,000 killed and wounded. Poland lost 200,000 or more soldiers killed or wounded. The Germans took some 400,000 Polish soldiers prisoner and about 200,000 were taken by the Soviets. Another 85,000 soldiers were interned in Rumania, Hungary, Latvia and Lithuania. Both the victorious Germans and Soviets murdered thousands of Polish prisoners of war. Probably the best known atrocity was the murder of more than 15,000 Police officers and men by the Soviets at Katyn forest.

ENIGMA—JULY 1939

During the period 1933–1938 three Polish mathematician-decryptologists managed to construct their version of a German Enigma code machine. These scientists, Messrs. Marian Rejewski, Henryk Zygalski and Jerzy Rózycki, successfully broke the German code. At the end of July 1939, the Polish General Staff turned over the Polish Enigmas and decoded German ciphers to France and Great Britain. In Britain, operation "Magic" made use of the Poles' findings at the Center of Decryptology located in Bletchley. All Enigma and operation "Magic" files have not been declassified. Despite this fact, there is no disagreement among historians as to the role the Enigmas, further developed and used by the Allies, had on the outcome of the war.

POLISH ARMY IN FRANCE—1939 TO 1940

On September 20, 1939, Polish General Wladyslaw Sikorski, who would become the Commander-in-Chief of all Polish Armed Forces, was appointed commander of all Polish forces in France by the exiled Polish government in France officially recognized by the Allies on September 30, 1939. On June 5, 1940 when the Germans attacked France, Sikorski had an army of about 82,000 soldiers. In view of the military situation on France, Sikorski and Polish President Raczkiewicz flew to London and met with Winston Churchill who was moved by the Poles determination to continue their fight against the enemy. On June 21, 1939 following the French defeat only 27,000 Polish officers and men were evacuated to Britain with the President of Poland who was welcomed by King George VI.

TATRA HIGHLANDS RIFLE BRIGADE IN NARVIK, NORWAY—SPRING 1940

When the Germans attacked Norway on April 9, 1940, the Tatra Brigade was sent to Norway as part of an Allied Expeditionary Force to take back Narvik from a strong German force. The attack was successful but in view of the situation in France, the Allies decided to evacuate the Expeditionary Force to Brest and the Tatra Brigade provided cover for the evaluation. Three Polish destroyers, *Lightning*, *Storm* and *Thunder* protected Polish passenger liners, *Batory*, *Sobieski* and *Chrobry*, which were used to transport the Force. *Chrobry* was sunk on May 16, 1940 in the vicinity of Bodo. The Tatra Brigade reached Brest but was disbanded after France fell. Some members of the Brigade who were able to flee French ports, with great difficulty, reached Scotland to resume the fight.

CARPATHIAN RIFLE BRIGADE IN TOBRUK, LIBYA—1941 TO 1942

In August 1941 the Brigade, 4,683 strong and under cover of darkness, landed at Tobruk and eventually took up positions at the foot of Ras al-Medauar. Behind Ras al-Medauar were amassed 380 machine guns and another 110 guns of various sizes manned by crack German troops. On December 1, 1941 the Brigade attacked the German positions and at 1000 hours the red and white flag of the Polish Republic flew atop Ras al-Medauar. After the blockade of Tobruk, the Brigade took part in the counter-offensive of the British 8th Army. On the 15th of December they broke through the German-Italian lines at El Gazala. On March 24, 1942 the Brigade returned from the front to Egypt.

POLISH ARMED FORCES ON THE WESTERN FRONT FROM 1942 TO 1945

General Maczek's Polish First Armored Division: The 1st Polish Armored Division led by General Stanislaw Maczek began organizing in England on February 25, 1942. It was made up of Poles who managed to flee from France, and Polish soldiers repatriated from the Soviets following Polish-Soviet negotiations which took place on July 30, 1941. At the end of July 1944, the Division was in France; it numbered 885 officers and about 15,000 men. Maczek and his Poles fought in the Falaise-Chambois-Mont Ormel region, breaking through the 1st SS Adolf Hitler Division and the 12th SS Hitlerjugend Division and taking almost 5,000 prisoners including one general and 150 officers.

On September 28, 1944 the Division crossed the French-Belgian border and freed Ypres. Moving northward on October 27th they freed Breda, and the village made every member of the Division an honorary citizen. For the next five months the Division guarded the port of Antwerp in Belgium where the Allies shipped war supplies for the European campaign. In April, 1945, the Division was again in combat at the Kusten Canal and on

May 4, 1945, participated in the attacks on Wilhelmshaven. The following day the German forces in this area surrendered. The total losses of the First Armored Division were 1,290 dead, 3,803 wounded and 585 missing as it fought for Polish independence and Allied victory.

Polish Second Corps on the Italian Front—Monte Cassino, Ancona and Bologna: The Polish 2nd Corps was organized in 1943 from repatriated Polish soldiers who had been captured by the Soviets in 1939. The Corps was composed of 52,692 soldiers led by Polish General Wladyslaw Anders who reported to the British 8th Army Commander General Oliver Leese. General Leese ordered the Poles to take the Monte Cassino complex. The extremely bloody fighting began on May 11, 1944 and ended on May 19th when Monte Cassino was taken by the Poles. This forced the Germans to fall back from the Gustav line to the Hitler line of defense. The Polish losses included 4,290 killed, wounded and missing. British Marshal Alexander sent a signal to the Poles which said that if he had the opportunity to choose those he wanted to serve under his command, his choice would be the Poles of the 2nd Corps. The Marshal ended his signal with a salute of deep respect.

Monte Cassino was only a warmup for the Polish 2nd Corps. The following month, June 15, 1944, the Corps was transferred to the Adriatic front. From that date to the first days of September the Corps advanced, fighting brilliantly, taking Ancona and breaking the northern German defense line near Pesaro. The Poles took about 4,000 German prisoners and more than 300 weapons of all types. They buried nearly 3,000 Germans. General Leese congratulated General Anders and his soldiers for conducting a most successful campaign.

The Polish Corps moved slowly northward during the winter and early spring over difficult mountain terrain and in very bad rainy weather. By April 9th the Corps began its final thrust to Bologna. The way was mined and trapped. There were seven rivers to cross: Senio, Santerno, Sellustra, Sillaro, Giaino, Idice and Svena. On April 15, 1944 at 0600 hours the Poles entered Bologna following the American 5th Army which entered at 0800. The new British 8th Army Commander, General MacCreery, signalled General Anders: "In your march on the Vis Emilia to Bologna you fought the 26th and 1st German armored divisions and four parachute divisions, some of the best in the German Army. In these operations you showed admirable fighting spirit, steadfastness and competence in battle. I send you and all your officers and men my warmest congratulations and expressions of admiration." The campaign on the Adriatic side of Italy cost the 2nd Polish Corps 2,300 killed, 8,000 wounded and 264 missing.

POLISH AIR FORCE AND THE AIR BATTLE OF BRITAIN

After the defeat of Poland, much of the Polish Air Force fled to France. During the invasion of France, Poles downed 56 German aircraft and damaged another 9. Polish losses were 26 killed which included 11 pilots. Following the capitulation of France, 986 officers and 3,217 men of the Polish Air Force managed to escape to England.

In England, the Polish Air Force was organized into two fighter divisions—the 302 and 303—and two bomber divisions, the 300 and 301. After training conducted by the Royal Air Force (RAF), the Poles contributed to Allied victory in the Battle of Britain during the period August 8, to October 31, 1940. The score for Polish pilots was 203 enemy aircraft shot down, 35 probables, and 35 damaged. This was more than 25 percent of all the German air losses. The Poles lost 33 pilots out of a total of 131 who took part in the battle.

POLISH NAVY 1939 TO 1945

According to an agreement between Poland and Britain signed on November 19, 1939, what remained of the Polish Navy came under the command of the British Admiralty which also leased the Poles a number of ships. With this arrangement the Polish fleet numbered two cruisers, 10 destroyers, five submarines, 30 miscellaneous craft and 47 naval personnel units. The Polish fleet engaged the enemy 665 times sinking seven warships, two submarines, 339 transports and shooting down 20 enemy aircraft. Perhaps the most memorable of these engagements took place the night of May 26-27, 1941, when the Polish destroyer *Lightning*—as part of the 4th British Destroyer Flotilla—sighted and attacked the crippled German battleship *Bismarck*. The *Bismarck* was sunk on the morning of May 27th by the British Fleet.

Polish Navy losses during the war were 404 killed and 191 wounded. The fleet lost 13 ships of all types, two submarines and 74,500 tons of shipping.

THE POLISH UNDERGROUND 1940 TO 1945

HOME ARMY: The Home Army, otherwise known as the AK (an acronym for "Armia Krajowa") was by far the largest partisan organization in occupied Poland. On March 1, 1944, the AK numbered 389,129 soldiers. The Army conducted 1,175 recorded actions which included train derailments, burning of trains and the destruction of 38 bridges. In addition, the AK damaged 19,508 railroad cars, destroyed 1,167 containers of gasoline, burned 272 supply warehouses and damaged 4,326 vehicles of various types. German supply lines and communication points were constantly under attack. A number of Gestapo jails were broken into and almost 2,000 Gestapo agents were assassinated.

PEOPLES ARMY: The communist dominated Peoples Army was formed on January 1, 1944 and was joined by the Peoples Guards which created a partisan force of about 50,000 soldiers. The Army reported more than 1,550 actions which included 774 attacks on enemy transport and communications. There were 220 counterattacks against German terrorist activities and 190 sorties against the German military supply infra-structure. There were 370 battles recorded against the Wehrmacht and German Security Forces.

OPERATION "BURZA" (STORM): In January 1944, plan Burza was executed. The AK in an effort to reclaim Polish territories attacked retreating German forces and bands of Ukrainian Nationalists alongside the Red Army. At first there was cooperation between the Poles and the Reds. But in less than three weeks of Operation Burza AK General Okulicki was forced to disband the AK because he had no choice. The Red Army disarmed the Poles and sent some to the Polish Army in Wolyn and interned a portion in Vilno. The remainder were arrested and sent to camps in the USSR. About 200,000 members of the Home Army, including some 50,000 soldiers were deported to the east.

WARSAW UPRISING ON AUGUST 1, 1944: The eastern battle front had moved very close to Warsaw by the summer of 1944. This encouraged the Home Army Command (AK), in concert with the Polish government in exile, to liberate Warsaw by attacking the German occupation forces. An attack was ordered and a catastrophe ensued. Promised supplies from the west by air drop never came. In the east, Stalin's armies, which included General Zygmunt Berling's Polish army, were not allowed by Stalin to cross the Vistula to support the uprising. More than 10,000 insurgents were killed, most of them young men and women. Nearly 7,000 were wounded and 5,000 were missing. More than 188,000 civilians were killed. Hitler personally ordered that survivors vacate the city and that the German Army destroy all of Warsaw.

POLISH ARMY IN THE USSR AND THE EASTERN FRONT

REPATRIATION OF POLISH ARMY: When Hitler attacked the USSR in June 1941 Stalin found himself on the side of the Allies. This opened the door to diplomatic relations between Poland and the Soviets. On July 30, 1941, an agreement was reached between the Poles and the Soviets with the help of the British. General Sikorski met Stalin in Moscow December 3rd and 4th and discussed the repatriation of Polish prisoners of war in the custody of the Soviets and the freeing of Polish civilians.

From January 13 to 25, 1942, the Polish Army was transferred from the various Soviet prison camps to southern asiatic republics in the USSR. Polish prisoners were held in far away Soviet camps under extremely difficult conditions. Thousands of Poles died in captivity. An accounting of Poles held prisoner was almost impossible and research concerning those that never returned from captivity continues to this day. Finally, by the summer of 1942 the Poles were evacuated to Persia in two groups. The final count was 115,742 persons. There were 78,470 soldiers and 32,272 civilians which included 12,733 war orphans.

The repatriated Polish officers and men evacuated to Persia under the leadership of General Anders formed the 2nd Polish Corps which fought so well on the Italian front.

POLISH ARMY IN THE USSR: In April of the following year, the Poles in London and the Soviets broke off diplomatic relations. For Poles who had not managed to leave the USSR with General Anders this was another opportunity to fight the Germans. In May 1943 the 1st Polish Infantry Division was formed in Sielce under the leadership of Colonel Zygmunt Berling. By October 1943 the formation was large enough to be designated the 1st Polish Army Corps.

The baptism of battle for the 1st Polish Infantry occurred in the area of Lenino. Action against strong German forces began on October 12, 1943. The Poles showed a great will to fight and inflicted heavy losses on the enemy. More than 1,500 Germans were killed and 329 taken prisoner. The Poles lost 502 killed, 1,776 wounded and 663 missing.

The 1st Polish Army Corps by March 1944 had grown to the 1st Polish Army commanded by newly promoted, General Zygmunt Berling. At the end of April, the Poles joined Soviet armies at the White Russian (Belorussian) front.

THREE POLISH ARMIES AND WARSAW: In the 1944 Soviet summer offensive the 1st Polish Army marched westward freeing Lublin on July 22, 1944. At this time, in accordance with a decree of the communist-controlled Polish National Freedom Committee in Poland, the 1st Polish Army and the underground Peoples Army were joined into one force under the command of General Michal Rola-Żymierski. Two more Polish armies were formed; The 2nd commanded by General Stanislaw Poplawski and the 3rd under General Karol Świerczewski.

The armies marched westward and on September 14, 1944 General Berling with his 1st Army entered the Praga section of Warsaw

located on the east side of the Vistula River. The Warsaw insurgents were still fighting the Germans in Żoliborz and Mokotów on the west side of the Vistula in city proper. The Polish armies remained on the east side of the Vistula until January 1945 when General Berling was relieved of the 1st command by General Poplawski and the 3rd Army was disbanded. This left General Świerczewski free to take command of Poplawski's 2nd Army.

FROM THE VISTULA TO THE ODER: On January 14, 1945 the Soviets launched their great offensive from the Vistula to the west. By March the 1st Polish Army reached the Baltic in the vicinity of Kolobrzeg and by the 29th of March the Polish flag flew over Gdańsk. The 2nd Polish Army after February operations in the Kutno-Lódź area reported to the Soviet commander of the Ukrainian front, and then marched westward to take part in the Berlin operation.

POLISH FIRST AND SECOND ARMIES AND BERLIN: At the beginning of April 1945 both Polish armies reached a strength of about 390,000 soldiers. April 16, 1945, the 1st Army fought its way across the Oder and four days later was in pursuit of retreating German forces. On May 3, 1945 its troops reached the Elbe. The next day they joined with the American 9th Army in the outskirts of Berlin. The 2nd Artillery Brigade, the 6th Motorized Battalion and the 1st Infantry Division of the 1st Polish Army took part in the conquest of Berlin which took place on May 2, 1945. The Polish flag flew alongside the flag of the USSR over Berlin.

The 2nd Polish Army spent most of its time fighting the stubborn German "Mitte" (Middle) Army which refused to surrender after the fall of Berlin. On May 7, 1945, five days after the fall of Berlin the 2nd Polish Army crossed the border into Czechoslovakia in pursuit of the Mitte Army. On the 11th, the Germans ceased fighting near Prague.

POLISH WAR LOSSES 1939–1945

The contributions of the Polish Armed Forces to Allied victory were never well known and are by now mostly forgotten. Poles contributed much as can be seen from the foregoing review. But the Polish nation also lost heavily and suffered terribly while making its contributions and while trying to survive under the oppressor.

Hitler's aim was to exterminate not only the Jews but also Poles and their entire culture. Of all the Allies who fought, Poland suffered the greatest losses. It is estimated that Poland lost 220 out of every 1000 citizens during the war. By comparison the Soviets lost 124. The number for France was 13, Great Britain 8 and the United States 1.4.

In addition to human losses, Poland suffered enormous material losses which in 1945 were estimated to be near 50 billion dollars. There was also the loss of an estimated 43% of all Polish art, national archival material and other historical and cultural treasures.

It is appropriate to end this partial review by repeating the words of Pope John Paul II: "In World War II, on every front, Poles shed their blood for independence. Polish independence cannot be measured in geopolitical terms, but only according to authentic criteria of national sovereignty in its own nation."

NB. The primary source for this review is: Baluk and Michalowski, Polski czyn zbrojny 1939–1945, (Polish Military History 1939–1945), Wydawnictwo Polonia, Warszawa, 1989.

About the Author: Sigmund Bajak is a retired Rear Admiral in the U.S. Naval Reserve who served in World War II, Korea, Berlin Crisis and Vietnam. As a civilian, he spent 30 years as an executive for the National Broadcasting Company in New York rising to a Director's position. At present, he is a doctoral candidate in Polish military history at the University of Warsaw. He is a member of the Polish-American Congress.•

POSTMASTER GENERAL STAMPS OUT HOPES FOR VETERANS

• Mr. SMITH. Mr. President, this past Memorial Day, May 30, 1994, the Senate wrote to Postmaster General Marvin Runyon requesting the issuance of a commemorative stamp honoring American POW's and MIA's. On September 12, 1994, I took the floor to notify my colleagues that, at that time, 14 weeks later, we still had not received a response to our letter. Since 82 Senators had signed the letter, I felt that it would interest them to know that the Postal Service still lacked the common courtesy to respond.

Well, Mr. President, over 100 days, several unanswered telephone calls, and one floor statement later, I have the Postmaster General's answer, if it can be called an answer. I would point out that this is not the original signed copy. That is still making its way through the Postal delivery system. This one is a photocopy. In fact, I have received two photocopies. Both were addressed to me, but neither was intended for me. As indicated by the highlighted names at the end of the letter, one was intended for Senator KEMPTHORNE, and one was intended for Senator DASCHLE, both of whom were signers of the original letter.

The issue that brings me to the floor is not that I received the letter third-hand. Frankly, I was happy to receive it at all. The issue is not the fact that it took nearly 4 months to get an answer. I addressed that issue last time I took the floor.

The issue, Mr. President, is the letter itself. If this letter is representative of the current Postal Service management, we are in big trouble. The letter demonstrates that its author, Postmaster Runyon, or whoever drafted the letter, has little command over the issue at hand. Indeed, one would seem to infer from the response that the writer hardly read the original letter, signed by 82 Senators.

To begin, Mr. President, I will ask that the Senate's original letter to Postmaster Runyon, his response and my followup letter to him be inserted for the RECORD at this point, and then I will go through—point by point—my concerns with his response.

U.S. SENATE,
Washington, DC, May 30, 1994.

Hon. MARVIN RUNYON,
Postmaster General, U.S. Postal Service, Washington, DC

DEAR MARVIN: We are writing to urge you to approve the issuance of a commemorative stamp honoring American prisoners of war and missing in action personnel.

As you may know, in late 1992, the Senate unanimously adopted an amendment to the Department of Defense Authorization Bill mandating the issuance of a POW/MIA stamp. Although this amendment was removed from the bill in deference to the normal stamp approval process, the conference nevertheless stated its strong support for such a stamp.

The issuance of a POW/MIA stamp is very important to us and, we hope, important to you. As we are sure you realize, it is also important to the families of missing service personnel and to millions of American veterans, including many Postal Service employees.

We are also asking that the normal licensing fee for the stamp design be waived, as was recently done for the AIDS stamp, in order to allow veterans' organizations and POW/MIA family organizations to reproduce the design.

This year marks the 30th anniversary of the capture of Everett Alvarez, a Lieutenant j.g. in the U.S. Navy, who became the first and longest-held American POW in North Vietnam. Lt. Alvarez was released in 1973, during "Operation Homecoming." We are also observing the 50th anniversary of the landing at Normandy, which led to the liberation of Europe and the subsequent release of hundreds of American POWs. Given the recent focus on America's efforts to account for POWs and MIAs, we believe that the release of a POW/MIA stamp would be timely and appropriate.

National POW/MIA Recognition Day is scheduled for September 16, 1994. We suggest that this would be an excellent target date for the unveiling of the stamp. As the expedited approval of the AIDS awareness stamp demonstrated, this date is not unreasonable.

A POW/MIA stamp meets the critical elements normally used for selecting commemorative stamps.

1. American POWs and MIAs have contributed significantly to America and its history.

2. The POW/MIA issue is a theme of widespread national appeal and significance. Indeed, Presidents Reagan, Bush, and Clinton have publicly declared the resolution of this issue to be a matter of "highest national priority."

3. A POW/MIA stamp was last issued on November 24, 1970, over 23 years ago. This far exceeds the policy of not considering stamp proposals if a stamp treating the same subject has been issued in the last 10 years.

4. The Postal Service normally desires the submission of subjects three years prior to the proposed date of issuance. Members of Congress, veterans organizations, and families of POWs and MIAs have been continuously petitioning for such a stamp for well over a decade.

5. As the number of petitions which have already been sent to the Citizens' Stamp Advisory Committee would clearly demonstrate, there is considerable interest in a POW/MIA stamp and, as such, its issuance would generate millions of dollars in postal revenues. Veterans and veterans' organizations, families and friends of POWs and MIAs, military personnel, and supporters, would all be likely to use such a stamp. From a marketing perspective, a POW/MIA stamp would be an excellent choice.

We thank you in advance for your assistance and cooperation in this matter, and we look forward to working with you.

Sincerely yours,
Bob Smith, Bill Roth, Strom Thurmond, Herb Kohl, Dick Lugar, Barbara A. Mikulski, Kent Conrad, Thad Cochran, Fritz Hollings, Alfonse D'Amato, Daniel K. Akaka, David Durenberger,

Thomas Daschle, Larry E. Craig, John Breaux, Paul Sarbanes, Jesse Helms, Frank R. Lautenberg, Conrad Burns, Harris Wofford, Jeff Bingaman, Jim Jeffords, Ben Nighthorse Campbell, J. Bennett Johnston, Tom Harkin, Ted Stevens, Kay Bailey Hutchison, Hank Brown, Daniel Inouye, Judd Gregg, J. Lieberman, Arlen Specter, Paul Wellstone, Dirk Kempthorne, George Mitchell, Dan Coats, Lauch Faircloth, John Warner, Patrick Leahy, Paul Simon, Alan Simpson, Don Riegle, Richard Shelby, John Chafee, Dennis DeConcini, Sam Nunn, Robert C. Byrd, Bob Graham, Bill Cohen, Phil Gramm, John F. Kerry.

Chuck Grassley, Connie Mack, Carol Moseley-Braun, Slade Gorton, Wendell Ford, Jim Sasser, Edward M. Kennedy, David Patrick Moynihan, Chuck Robb, Harlan Mathews, Paul D. Coverdell, Russ Feingold, John Kerry, Patty Murray, Max Baucus, Trent Lott, Harry Reid, Nancy Landon Kassebaum, Christopher J. Dodd, Dianne Feinstein, Alfonse D'Amato, Frank H. Murkowski, Jay Rockefeller, Don Nickles, Richard Bryan, Larry Pressler, Bob Packwood, Pete Domenici, Byron Dorgan, Orrin Hatch, Barbara Boxer, Malcolm Wallop.

U.S. POSTAL SERVICE,
Washington, DC, September 20, 1994.

Hon. BOB SMITH,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH: This is in response to the 35,000 signed public petitions and your request along with 81 other Senators, for the issuance of a commemorative stamp on September 16, to honor Prisoners of War and Missing in Action Personnel (POW/MIA).

The U.S. Postal Service supports the concept of publicizing information and scheduling events to increase public awareness of the continuing plight of locating and releasing POW/MIAs. As noted in your recent correspondence to us, we issued a commemorative POW/MIA stamp over 23 years ago on November 24, 1970. While 23 years may have passed since the issuance of this stamp, it still remains a one-time occasion, in competition with many other historical events. In view of these known realities, we would like to recommend for your consideration an alternative to the issuance of another POW/MIA stamp.

Our suggested option to the POW/MIA commemorative stamp emphasizes the need for a greater national appeal. In doing so, we realize that any relating commemorative events should include not only the efforts of the Postal Service, but that of Congress, state, local, and federal agencies, and POW/MIA organizations. In view of the prospective to both broaden and heighten the emphasis on this issue, we recommend that in 1995, Congress establish a national, annual recognition period (day, week, or month) to honor POW/MIAs.

In its efforts to make certain that such an annual event receives full attention and recognition, the Postal Service would support the activities initiated by the Veterans Administration or other lead governmental organizations. This could be accomplished by reminding our 700,000 employees of the event through creation of a generic special cancellation for use at local ceremonies. Additionally, the creation of a cancellation die hub could be used to cancel mail at selected locations.

We strongly believe that an annual recognition event would have more impact and generate more public awareness than issuing another one-time commemorative stamp. With that thought in mind, we would appreciate your careful consideration of our proposal. It is our goal to not only bring forth a compromise on this issue, but a greater substantive and meaningful approach to a national issue that is very important to families of missing service personnel, and to millions of American veterans, including Postal Service employees.

Best regards,

MARVIN RUNYON,
Postmaster General, CEO.

U.S. SENATE,
Washington, DC, September 30, 1994.

MARVIN RUNYON
Postmaster General, CEO, U.S. Postal Service, Washington, DC.

DEAR MARVIN: This is in response to your letter concerning the issuance of a POW/MIA stamp dated September 20, 1994, a copy of which has been provided to my office.

For your information, Congress has annually enacted a National POW/MIA Recognition Day since 1979 with the support of each Administration during this period. Therefore, your "compromise" proposal for an annual POW/MIA day instead of a commemorative stamp is not a reasonable compromise at all. It is offensive to the hundreds of thousands of veterans and POW/MIA families who have petitioned the Postal Service for a stamp on this matter for the last decade.

Since President Reagan took office, the POW/MIA issue has been designated as a matter of "highest national priority" by every Administration. Because of your inadequate response, I am now firmly committed to enacting legislation which will require the Postal Service to issue a POW/MIA stamp.

Given the expressed views of Congress on this matter by a vote of the Senate, Conference Report language, and the May, 1994 follow-up letter, I had hoped, and indeed still hope, that you will alleviate the need for legislative action by issuing a POW/MIA stamp in the same manner the AIDS awareness stamp was issued.

Sincerely,

BOB SMITH,
U.S. Senator.

Mr. SMITH. I will start at the top of the page, with the date. Postmaster Runyon's letter was sent on September 20, 1994. As my colleagues know, I personally presented the original letter to the vice president of the Postal Service, Robert Harris, on May 30, 1994. That letter, which I have just inserted for the RECORD, specifically requests that the stamp be issued by September 16, 1994. One would think that, at the very least, we could have received a response by then.

The letter begins "This is in response to the 35,000 signed petitions . . . ." Let's stop right here. Mr. President, I received that many petitions during my years in the other body alone. The Veterans' organizations have certified to me that there have, in fact, been hundreds of thousands of petitions sent to the Postal Service on this issue. I am not saying that the Postal Service needs to count every one of these petitions, although you would think that when someone goes through the trouble of signing and mailing a petition, they ought to be acknowledged. But there out to be some way to keep a close estimate of how many petitions have come in.

The first sentence goes on to acknowledge our request that the stamp be issued by September 16, 1994. This is correct, we did request that the stamp be issued on September 16. Although, given that Mr. Runyon's letter is dated September 20, 1994, the September 16 deadline would seem to be a moot point.

The next sentence:

The U.S. Postal Service supports the concept of publicizing information and scheduling events to increase public awareness of the continuing plight of locating and releasing POW/MIAs.

The most ironic part of this sentence is that the Postal Service supports the concept of publicizing information. Every year, we call the Postal Service to find out whether the POW/MIA stamp is even up for consideration by the Citizen's Stamp Advisory Committee. The Postal Service has always strongly maintained that it could not publicize this information. To correct that problem, I may well introduce legislation next Congress to require the Citizens's Stamp Advisory Committee to adhere to all of our Federal "government in the sunshine" laws. I know that the operations of the Citizens Stamp Advisory Committee were of concern to my friend Senator STEVENS, the ranking Republican on the subcommittee with jurisdiction over these issues, since, during the 102d Congress, he introduced legislation to restructure the Stamp Advisory Committee.

The letter goes on to say:

As noted in your recent correspondence to us, we issued a commemorative POW/MIA stamp over 23 years ago on November 24, 1970. While 23 years may have passed since the issuance of this stamp, it still remains a one-time occasion, in competition with many other historical events.

This is a bit confusing to me. First of all, as I understand the same approval guidelines, we are only supposed to allow a 10 year period between issuing stamps treating the same subject. That period has obviously long-since expired. I would like to ask unanimous consent that a report by the Congressional Research Service entitled "Commemorative Postage Stamps: History, Selection Criteria, and Revenue-Raising Potential," be included in the RECORD at the conclusion of my remarks. I would point out for my colleagues that the Senate's original letter specifically addresses the issue of how a POW/MIA stamp meet these criteria.

Second, and most importantly, what does Mr. Runyon mean by "it still remains a one-time occasion"? If any of my colleagues could help me figure this one out, I would appreciate it. I hope he is not implying that we should

only care or be concerned about these Americans only once in a lifetime. There were still many POW's in Vietnam in 1970, when the POW/MIA/KIA stamp was issued. But, Vietnam was certainly not the only place in which Americans were held as prisoners of war, and if Mr. Runyon is implying that the taking of prisoners was a one-time occasion in Vietnam, he is sorely mistaken. Frankly, I have tried to see Mr. Runyon's point here, and I cannot see how he can consider the plight of American POW's and MIA's to be a one-time occasion, because it certainly is not.

Frankly, I would like to know what the Postmaster General considers a one time occasion. I would assume that the Moon landing would be a one time occasion. That was a truly historic occasion, and I can remember watching it. Of course we ought to have a stamp honoring that occasion, and the men who took that giant step for mankind. They risked their lives so that they could spend a long extended period of time in a cramped, uncomfortable environment, terrified, and uncertain of their fate. It is perfectly appropriate that we pay tribute to their achievement. That is why, since that time, there have been no fewer than five different stamps treating the subject of the Moon landing. There have also been numerous others treating the overall subject of space exploration. But, Mr. President, at the same time that all of this great achievement took place, there were American soldiers held in Vietnamese prison camps, suffering inhuman conditions, and facing near-certain deaths. They risked everything so that we might have our freedom. They are as deserving as anyone of commemoration.

Mr. President, I would only like to make three more points on the subject of the one time occasion. First, the Moon landing was, in fact, an occasion. But, POWs and MIAs are people. To commemorate them is not to commemorate some one-time occasion, because, in fact, we can not point to any one occasion that exemplifies their heroism. We commemorate the soldiers themselves, not any related event. Second, I would say that, even if it were a one-time event, that is not an adequate excuse as to why the Postal Service refuses to issue a stamp. That is pointed out by the fact that the Moon landing has been the subject of numerous stamps in a shorter amount of time. Third, one might say that the Moon landing has much broader appeal. I would disagree in the strongest possible terms. Evidence of this is the fact that hundreds of thousands of Americans have signed and mailed petitions to the Postal Service requesting a POW/MIA stamp. At the same time, the Postal Service has been forced to run paid television advertisements to sell their space exploration stamp.

My point is not that there is anything wrong with space stamps. I am one of the strongest supporters of space exploration, and I believe it is a perfectly appropriate subject for commemorative stamps. And they do have a broad appeal. Everyone loves space exploration. But, my point is that, if the Postal Service's main criteria for choosing stamp designs is what will sell—as I personally believe it should not be—but if that is their criteria, they could not pick a stamp with a larger popular appeal than the POW/MIA stamp.

Mr. President, the whole issue of this being a one-time occasion brings up an important point. When many people think about POWs and MIAs, they think about the Vietnam war. This is understandable. But, more recently, the issue took on a special meaning for me when I watched Michael Durant, one of my constituents from Berlin, NH, bravely standing before the television cameras while he was being held captive in Somalia. Mr. Durant was thankfully returned home to his family, and I had the honor of attending an event in Berlin paying tribute to Mr. Durant. But, not every POW was returned to his family. In fact, as television cameras graphically depicted, some were beaten to death and dragged through the streets of Mogadishu. Sadly, they will not be returned to their families to be honored with celebrations and parties. The least we can do is to issue a commemorative stamp which pays tribute to their bravery. And we should also be paying tribute to those who remain unaccounted for as a result of their military service during World War II, the Korean war, and the cold war. There are several hundred military personnel from these wars whose fates remain unknown to this day. There are even servicemen from the Persian Gulf war whose remains have not or cannot be recovered by the United States. We should be paying tribute to all of these personnel who made the ultimate sacrifice.

Now, Mr. President, comes the most interesting and pathetic part of Mr. Runyon's letter. In light of Mr. Runyon's unyielding reluctance to issue a stamp honoring POWs and MIAs, he suggests a compromise. We compromise all the time around here, so I was interested to read on and hear him out. But, by virtue of the compromise he suggests, which is the whole point of his letter, I can come to no conclusion other than the fact that he did not even bother to carefully read the letter signed by 82 Senators. Mr. Runyon writes as follows:

> In view of these known realities, we would like to recommend for your consideration an alternative to the issuance of another POW/MIA stamp.
>
> Our suggested option to the POW/MIA commemorative stamp emphasizes the need for a greater national appeal. In doing so, we realize that any relating commemorative events should include not only the efforts of the Postal Service, but that of Congress, State, local and Federal agencies, and POW/MIA organizations. In view of the prospective to both broaden and heighten the emphasis on this issue, we recommend that in 1995, Congress establish a national, annual recognition period (day, week, or month) to honor POW/MIAs.

Until now, I had thought that the Postal Service had been about as unresponsive as it could possibly be. This alternative proposal proved me wrong. First of all, as my colleagues know, for the past 10 years, Congress has passed annual resolutions calling on the President to issue proclamations in observance of National POW/MIA Recognition Day. I would have hoped that the Postmaster General would have known that, particularly in light of the large number of Postal Service employees who are veterans. But, he is a busy man, and I guess he cannot be responsible for knowing all of these things. The fact that irritates me is that it was clearly stated in our original letter that September 16, 1994, was National POW/MIA Recognition Day. The fifth paragraph of our letter states as follows:

> National POW/MIA Recognition Day is scheduled for September 16, 1994. We suggest that this would be an excellent target date for the unveiling of the stamp.

Even if he hadn't read the letter, you would think that, after 14 weeks, his staff could have done some research about what had been done to honor POWs and MIAs. Second, how can Postmaster Runyon acknowledge our request for the issuance of a commemorative stamp on September 16, and ignore the very reason that request was made. I could say that perhaps Mr. Runyon overlooked the part about POW/MIA recognition day, but it is inconceivable that that is so. The only place that the September 16 date was mentioned in our letter was when we said "National POW/MIA recognition day is scheduled for September 16, 1994." It does not appear anywhere else in the letter. Yet, Mr. Runyon acknowledges the September 16 date in the very first sentence of his letter, and he goes on to offer his brilliant idea, his compromise, to use his own words, as an alternative to our stamp request. He does so as if it had not even occurred to any of us, and as if he was in some special position to offer such a proposal.

Mr. President, this is no compromise. Furthermore, this is not an oversight. As it is impossible to conclude that this was an error, the only conclusion I can make is that this is a blow off. Pure and simple. Postmaster Runyon does not want a POW/MIA stamp, for whatever reason. He ought to just say so. This is an attempt to appease the hundreds of thousands of petitioners and the 82 Senators who have have expressed their strong desire for a POW/MIA stamp. But, Mr. President, it doesn't fly.

Mr. Runyon goes on to write:

In its efforts to make certain that such an annual event receives full attention and recognition, the Postal Service would support the activities initiated by the Veterans Administration or other lead governmental organizations. This could be accomplished by reminding our 700,000 employees of the event through the creation of a generic special cancellation for use at local ceremonies. Additionally, the creation of a cancellation die hub could be used to cancel mail at selected locations.

These are things that Mr. Runyon could have and should have been doing all along. Why did he not remind his 700,000 employees of POW/MIA recognition day this year. A resolution was passed by both Houses of Congress. The Postal Service has an entire legislative department that monitors legislative developments. Someone should have taken notice when Congress declared September 16, 1994, to be POW/MIA recognition day. If not, Mr. Runyon was made aware of this upcoming recognition day when 82 Senators wrote to him. Finally, if he had not noticed any of that, President Clinton himself issued a Presidential proclamation calling for the observance of POW/MIA recognition day. I ask unanimous consent that President Clinton's proclamation be inserted in the RECORD at this point.

The proclamation follows:

NATIONAL POW/MIA RECOGNITION DAY, 1994—A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

This year marks the 50th anniversary of America's participation in the largest single amphibious assault in history. Considered by many to be a turning point in the Second World War, the D-Day invasion at Normandy serves as a clear reminder of our Nation's long-standing commitment to fight for the principles of democracy and to defeat the forces of oppression.

We must always remember the dedication and sacrifice of our service men and women who, throughout our history, have risked their lives to preserve freedom for future generations. As a Nation, we are forever indebted to these outstanding Americans for their selfless devotion to duty. In expressing our gratitude, we should also pause to recognize those patriots who were held as prisoners of war and those who remain unaccounted for as a result of their heroic service.

On September 16, 1994, the flag of the National League of POW/MIA Families, a black and white banner symbolizing America's missing, will be flown over the White House; the Capitol; the U.S. Departments of State, Defense, and Veterans Affairs; the Selective Service System headquarters; the Vietnam Veterans Memorial; and national cemeteries across the country. This flag is a powerful reminder to people everywhere of our country's firm resolve to achieve the fullest possible accounting of every member of the United States Armed Forces.

On this day, we pay tribute to our missing service members and civilians. In their names, we reaffirm our national commitment to securing the return of all Americans who may be held against their will and to repatriating all recoverable remains of those who died in service to our country. That effort ranks among our highest and most solemn national priorities. America's heroes, and their families and loved ones, deserve no less.

The Congress, by Senate Joint Resolution 196, has designated September 16, 1994, as "National POW/MIA Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

Now, Therefore, I, William J. Clinton, President of the United States of America, do hereby proclaim September 16, 1994, as National POW/MIA Recognition Day. I ask that every American take time to honor all former American POWs, as well as those service members and civilians still unaccounted for as a result of their service to our great Nation. I encourage the American people to recognize the families of these missing Americans for their ongoing dedication to seek the truth and for their determination to persevere through many long years of waiting. Finally, I call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

In Witness Whereof, I have hereunto set my hand this fourteenth day of September in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

WILLIAM J. CLINTON.

Mr. SMITH. My colleagues will note that the President calls on "State and local officials and private organizations to observe this day with appropriate ceremonies and activities," the very same suggestions that Mr. Runyon makes in his "compromise proposal."

Mr. Runyon's concluding paragraph states as follows:

We strongly believe that an annual recognition event would have more impact and generate more public awareness than issuing another one-time commemorative stamp.

First of all, it is ludicrous to say that a National Recognition Day would generate more public awareness than a commemorative stamp. Evidence of this fact is that neither Mr. Runyon or any of his deputies who wrote this letter has any idea that there already is a POW/MIA Recognition Day, and has been for the past 10 years. Everyone uses stamps. I suspect that a first-class POW/MIA stamp—29 cents or whatever the going first-class rate is at the time that it is issued—would be that most popular stamp issued. As popular as Popeye, Marilyn Monroe, and Elvis may be, I think that a stamp honoring our American POWs and MIA's would have a much broader and more serious appeal. Certainly, it would be more in keeping with the traditional role of stamps calling attention to outstanding Americans, historic events, and national goals.

Finally, Mr. Runyon states "With that thought in mind, we would appreciate your careful consideration of our proposal." Mr. President, as the author and sponsor of Senate Joint Resolution 196, designating September 16th as National POW/MIA Recognition Day, I can tell you that this certainly was not Postmaster Runyon's proposal. Nor, Mr. President, do I claim ownership for the proposal. The recognition day initiative belongs to the thousands of families of POW's and MIA's. It belongs to the millions of veterans and their families and friends. It belongs to the POW's and MIA's themselves, many of whom we are still trying to account for.

So, Mr. President, in conclusion, I am not going to consider Mr. Runyon's proposal, because it is not a proposal. What he proposes has already existed for over a decade. His letter is, therefore, an affront to every American who has worked so hard to gather signatures, and to push for this simple stamp. More importantly, it is an affront to all American prisoners of war, whether they came home or are still missing. Issuing a POW/MIA stamp is a simple gesture that Mr. Runyon could do in an afternoon. He did it in a heartbeat when he wanted the AIDS stamp. He could do it now. What I am going to consider is offering legislation, identical to the legislation I offered last year, mandating that Postmaster Runyon issue a POW/MIA stamp. It had 65 cosponsors and passed the senate unanimously as an amendment. I was told that it was stripped from the underlying bill by a handful of conferees because they did not want to create a precedent for Congress to mandate stamps. I was urged to go through the normal channels in trying to encourage Mr. Runyon to make this simple gesture.

But, now, Mr. President, having gone through every nonlegislative channel, I have come to the conclusion that Postmaster Runyon simply does not want to issue a POW/MIA stamp. Perhaps it is because it is not politically correct, like many of the other stamps the Postal Service has issued during Mr. Runyon's tenure. Whatever the reason, it is not good enough for this Senator, and it is time for Congress and the American people to step in.

CRS REPORT FOR CONGRESS—COMMEMORATIVE POSTAGE STAMPS: HISTORY, SELECTION CRITERIA, AND REVENUE-RAISING POTENTIAL

(By Bernevia M. McCalip, Analyst in Business and Government Relations Economics Division)

SUMMARY

One of the most successful revenue-raising programs, other than the sale of regular postage stamps, operated by the U.S. Postal Service (USPS) is the commemorative stamp program. The technical name for stamp collecting is philately. A major portion of philately involves the printing, buying, selling, and collecting of commemorative stamps. In fiscal year 1991, philatelic sales generated an estimated $191 million in revenues, a 24-percent increase over 1990.

In fiscal year 1991, the USPS produced 110 new stamps and stationary items in honor of anniversaries, notable people, and special events. According to Postmaster General (PMG) Marvin Runyon, fewer commemorative stamps will be issued in 1993 in response to collectors' complaints about the number of new stamps issued and concerns that the

current level of commemoratives issued diminishes the value of stamps and drives collectors away.

To help in the selection of commemorative stamps, the PMG seeks the aid of its Citizens' Stamp Advisory Committee. The Committee considers each stamp proposal and advises the PMG on stamp selection and design after which the PMG makes the final selections. The process of selecting commemorative stamps is a complex procedure guided by twelve basic criteria.

In recent years, the production and quality of commemorative stamps have raised various concerns among policymakers and stamp collectors. These concerns were the primary focus of congressional hearings held in 1991 by the House Post Office and Civil Service Subcommittee on Postal Operations and Services.

Since 1971, when the Post Office was reorganized, commemorative stamp sales have been viewed as an important and much needed revenue-raising function of the USPS. In the United States, the number of stamp collectors is estimated at 15 million, making stamp collecting one of the most popular hobbies in the United States if not in the world. Thus, a "well-chosen" stamp design can generate millions of dollars in postal revenues.

THE USPS COMMEMORATIVE POSTAGE STAMP

In addition to its regular line of postage stamps, one of the major activities of the USPS is the issuance of commemorative stamps. Since these issues focus on an important event, person, or theme, the selection of subjects and design of these stamps can be both controversial and financially rewarding to the USPS. Consequently, the USPS has developed a structured procedure to deal with the commemorative stamp process and, for economic reasons, to consider the revenue-raising potential through effective marketing.

The first commemorative postage stamp was issued in 1893 commemorating the historic Columbian Exposition. This series of 16 Columbian stamps was among the first postage stamps in the United States to feature pictures of other than portraits of Presidents or other famous people. The success of the Columbian stamp series prompted the Post Office to continue offering stamps to mark historic events and thus, the commemorative stamp became a regular feature of the Postal Service. Later, commemoratives were expanded and now include social issues such as conservation, employment of the handicapped, and higher education.

Commemorative stamps are printed in limited quantities in specific postage rate denominations and are sold in local post offices for specified periods. When the supply of commemorative issues is no longer available from the Postal Service, the issue is only available through buying, selling, and trading among the estimated 15 million stamp collectors and dealers in the United States.

The selection of subjects for commemoratives is a difficult and complex task, one which requires the aid and expertise of a Citizen's Stamp Advisory Committee. The Committee, made up of private citizens, reviews all proposals for the Postmaster General. In fiscal year 1991, the Postal Service received over 13,000 letters proposing more than 3,800 stamp issues.[1] Of the 3,800 stamp suggestions received, 110 stamp and postal stationery items were approved for commemoration and printed for distribution to the public.

In recent years, the Postal Service's stamp program has been criticized by collectors for issuing to many commemoratives, as well as producing too many stamps of a particular issue. Concerns are that too many stamps not only diminish the value of the hobby but drive collectors away. Postmaster General (PMG) Marvin Runyon, a former collector himself, has placed new persons in management positions, including those affecting the commemorative stamp program. Consequently, only 63 commemorative stamps are planned in 1993, a significant reduction in the number of commemoratives issued in 1992.

What additional effect the reorganization within the USPS' management level will have on the commemorative stamp program is unclear. Also unclear is how many of the current commemorative stamp functions will be retained by the Postal Service under a restructured program. One popular element of the stamp program is "first-day ceremonies" (the day that new stamps are unveiled) to the public. PMG Runyon has publicly announced that first-day ceremonies will continue, although the question as to who will arrange the events has not been addressed to date. Nevertheless, since the Postal Service is now in the midst of a major cost-reduction program, the revenue-raising potential of commemoratives could be a factor in deciding future stamp activities. And, although the positions of many Postal headquarters personnel previously assigned to arrange events such as the first-day ceremonies have been eliminated under the management restructuring plan, such authorized events could be managed by postal officials at the local level.

THE CITIZEN'S STAMP ADVISORY COMMITTEE

The Citizen's Stamp Advisory Committee was established in the former U.S. Post Office Department in March 1957 by the Postmaster General to "provide the Post Office Department philatelic, history, and artistic judgment and experience influencing the subject matter, character, and beauty of postage stamps." Carried over into the new USPS in the 1970 Postal Reorganization Act (P.L. 91–375), the Committee operates under the powers granted in Title 39 U.S.C., section 404(4)(5) and consists of a cross-section of experts in American art, business, history, technology (stamp design), culture, and philately. The members of the Committee serve at the pleasure of the Postmaster General for indefinite periods. The Committee now consists of eleven members, none of whom are postal employees.

The primary responsibility of these eleven members is to review and appraise all proposals for stamp subjects and to make recommendations for stamp subjects and design to the Postmaster General who has the exclusive and final authority to determine both subject matter and designs for U.S. postage stamps and stationery.[2] Because the Committee does not operate under a budget and meets about every eight weeks to carry out its statutory responsibilities, a considerable amount of research and work is required prior to a Committee meeting. To speed up the Committee's task, research employees of the USPS' Stamp Management Office receive and analyze all stamp subjects upon initial receipt. Subcommittees are formed among researchers by special theme such as sports, medicine, transportation, Black heritage, and performing arts to provide additional background and research if it becomes necessary. Occasionally, commemorative ideas require additional research into the subject to further "explore the idea's merit or to come up with a strong visual angle."[3] All supporting materials are then presented to the Committee along with the suggestions.

CRITERIA FOR SELECTING COMMEMORATIVE STAMPS

As a basis for its recommendation to the Postmaster General, the Citizen's Stamp Advisory Committee has outlined twelve standards for considering suggested commemorative stamp subjects.

1. It is a general policy that U.S. postage stamps and stationery primarily will feature American or American-related subjects.

2. No living person shall be honored by portrayal on U.S. postage.

3. Commemorative stamps or postal stationery items honoring individuals usually will be issued on, or in conjunction with, significant anniversaries of their birth, but no postal item will be issued sooner than 10 years after the individual's death. The only exception to the 10-year rule is the issuance of stamps honoring deceased U.S. Presidents. They may be honored with a memorial stamp on the first birth anniversary following death.

4. Events of historical significance shall be considered for commemoration only on anniversaries in multiples of 50 years.

5. Only events and themes of widespread national appeal and significance will be considered for commemoration. Events or themes of local or regional significance may be recognized by a philatelic or special postal cancellation,[4] which may be arranged through the local postmaster.

6. Stamps or postal stationery items shall not be issued to honor fraternal, political, sectarian, service or charitable organizations which exist primarily to solicit and/or distribute funds, commercial enterprises; or a specific product.

7. Stamps or postal stationery items shall not be issued to honor cities, towns, municipalities, counties, primary or secondary schools, hospitals, libraries or similar institutions. Due to the limitations placed on annual postal programs and the vast number of such locales, organizations and institutions, it would be difficult to single out any one for commemoration.

8. Request for observance of statehood anniversaries will be considered for commemorative postage stamps only at intervals of 50 years from the date of the State's first entry into the Union. Requests for observance of other State-related or regional anniversaries will be considered only as subjects for postal stationery, and only at intervals of 50 years from the date of the event.

9. Stamps or postal stationery items shall not be issued to honor religious institutions or individuals whose principal achievements are associated with religious undertakings or beliefs.

10. Stamps or postal stationery items with added values referred to as "semi-postals," shall not be issued.[5] Due to the vast number of worthy fund-raising organizations in existence, it would be difficult to single out specific organizations to receive such revenue. There also is a strong U.S. tradition for private fund-raising for charities, and the administrative costs involved in accounting for sales would tend to negate the revenues derived.

11. Requests for commemoration of significant anniversaries of universities or other institutions of higher education shall be considered only in regard to Historic Preservation Series postal cards featuring an appropriate building on the campus.

12. No stamp shall be considered for issuance if one treating the same subject has been issued in the past 10 years. The only exceptions to this rule will be those stamps issued in recognition of traditional themes

Footnote at end of article.

such as Christmas, U.S. Flag, Express Mail, Love, etc.

The USPS encourages the submission of subjects for commemorative postage stamps to the Committee at least three years prior to the proposed date of issuance to allow sufficient time for consideration, design, and production. Suggestions may be addressed to the Citizen's Stamp Advisory Committee, 475 L'Enfant Plaza, Room 4474E, Washington, D.C. 20260–6756.

Congressional involvement in the commemorative stamp process

In the selection and design of commemorative stamps, only the Postmaster General has the statutory authority to approve and issue such stamps. However, Members of Congress are generally requested by their constituency to support a particular commemorative theme or event. In doing so, a Member may choose to write the Postmaster General expressing support for a particular stamp proposal. In some cases, Members have introduced a House Resolution calling for the issuance or non-issuance of a stamp to commemorate a specific proposal. In the 102d Congress, nine such resolutions were introduced addressing the issue of commemorative stamps.

REVENUE RAISING POTENTIAL

Since operation of the Postal Service in 1971, the selection of commemorative stamps has been viewed as an important and necessary revenue-raising function. A "well-chosen" stamp design can generate millions of dollars in postal revenues. Consequently, a keen marketing strategy is also included as part of the commemorative stamp process.

Estimating revenues generated from the sale of commemorative related products is difficult, mainly because commemorative sales are not counted separately from the sale of other stamps and stamp products. Therefore, the Postal Service cannot accurately determine which stamps or products are actually used as postage and which are held by purchasers and not redistributed through the mail stream.

However, the Postal Service, in an attempt to gain some knowledge of how successful its commemorative program is, conducts annual surveys. The USPS' records show that the commemorative postage stamp program, other than the sale of regular postage stamps, is one of the most successful revenue-raising activities of the U.S. Postal Service. Although only a small proportion of the USPS' total revenue (less than one-half of one percent), the USPS estimated that $191 million was generated from the sale of commemorative stamps and postal stationery in fiscal year 1991. The Postal Service, in its 1991 *Comprehensive Statement on Postal Operations* (p. 52), noted that the Postal Service stamp program continues to generate the interest and enthusiasm of stamp collectors and the public.

Over the past several years, the USPS' commemorative sales marketing strategy has changed and at times has generated controversy. Until recent years, stamps celebrating historic Americans and events were the mainstay of the commemorative stamp program. According to Postmaster Runyon, while stamps honoring or featuring historic Americans or events are historically important, they have relatively little revenue potential. While stamps commemorating flowers, sport horses, entertainers (e.g., Elvis Presley) etc., generate some degree of controversy, the USPS has determined that the sale of such stamps have a greater revenue-raising potential. While it is expected that stamps commemorating historic Americans or events will not be significantly cut, stamp collectors and the public can expect much less of the old and much more of the "big attention-getters" such as the Elvis Presley stamp.[6]

FOOTNOTES

[1]There are rare occasions when the Postmaster General may select a commemorative stamp absent the Stamp Advisory Committee's recommendation.

[2]Three items of postal stationery are popular with collectors: embossed stamped envelopes, postal cards, and aerogrammes.

[3]Birth of a Stamp is a Sticky Issue. Insight, July 4, 1988. p. 61.

[4]Special postal cancellation is a phrase to commemorate a local event used by the Postal Service to cancel stamps.

[5]Semi-postals are stamps with a surcharge over and above the usual postage rate, with the extra revenue earmarked for a designated charity or government program.

[6]Stamp Trail to Oregon, Washington Post, Weekend, November 27, 1992. p. 78.●

AQUATIC WEED MANAGEMENT

● Mr. COCHRAN. Mr. President, a growing problem faces the water resources of our country. The inadvertent introduction of exotic plant species from Europe and Asia, such as Eurasian watermilfoil and hydrilla, is a nationwide ecological disaster in the making.

These nuisance aquatic weeds are rapidly choking our freshwater bodies, crowding out native and endangered aquatic species, hindering shipping lanes, restricting recreational activities, causing waterfront property values to drop, and restricting water flow through irrigation canals, drainage ditches and hydroelectric intake screens and turbines.

There are several methods of aquatic weed management, but very limited dollars are earmarked for solving this growing problem. State ecologists, fish and wildlife experts, and waterbody managers are convinced that safe, selective tools are available for controlling these nuisance weeds and restoring the ecological balance of our waters. States simply need funding to get the job done.

Therefore, I hope when we consider the Interior and related agency appropriations for fiscal year 1996, we will take a serious look at providing funding for States to institute effective methods of aquatic weed management.●

ORDER FOR STAR PRINT—S. 1991

Mr. KOHL. Mr. President, I now send to the desk and ask unanimous consent that a star print be made of S. 1991, the Professional Boxing Safety Act, in order to correct an inadvertent omission when the Senate Commerce Committee reported this matter on September 28.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 1098, 1099, 1100, 1143, 1145, 1179.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid on the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Paul M. Igasaki, of California, to be a Member of the Equal Employment Opportunity Commission for the remainder of the term expiring July 1, 1997.

Paul Steven Miller, of California, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 1998.

Gilbert F. Casellas, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 1999.

DEPARTMENT OF DEFENSE

Philip Edward Coyle, III, of the District of Columbia, to be Director of Operational Test and Evaluation, Department of Defense.

Jan Lodal, of Virginia, to be Deputy Under Secretary of Defense for Policy.

DEPARTMENT OF LABOR

Timothy M. Barnicle, of Maryland, to be an Assistant Secretary of Labor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

HOUSE OF REPRESENTATIVES CAMPAIGN SPENDING LIMIT AND ELECTION REFORM ACT OF 1993—MESSAGE FROM THE HOUSE

Mr. MITCHELL. Mr. President, I ask the chair to lay before the Senate a message from the House on S. 3.

The Senate resumed consideration of the message from the House.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. on Friday, September 30; that following the prayer, the Journal of proceedings be deemed approved to date and the time for the two leaders reserved for their use later in the day; that immediately thereafter, the Senate resume consideration of the motion to request a conference with the House on S. 3, campaign finance reform, with the time until 9:30 a.m. for debate on the motion to invoke cloture on the motion to request a conference; and that the time be equally divided and controlled between Senators BOREN and MCCONNELL, or their designees; that at 9:30 a.m., the Senate vote on the motion to invoke cloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:33 p.m., recessed until Friday, September 30, 1994, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 29, 1994:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PAUL M. IGASAKI, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JULY 1, 1997.

DEPARTMENT OF DEFENSE

PHILIP EDWARD COYLE III, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF OPERATIONAL TEST AND EVALUATION.

JAN LODAL, OF VIRGINIA, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY.

DEPARTMENT OF LABOR

TIMOTHY M. BARNICLE, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.